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The Commonwealth of Massachusetts

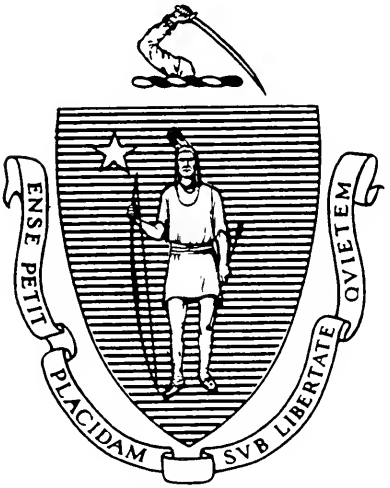
REPORT

OF THE

ATTORNEY GENERAL

FOR THE

Year Ending June 30, 1994



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Commonwealth of Massachusetts

In accordance with the provisions of Section 11 of Chapter 12 and of Chapter 32 of the General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This Annual Report covers the period from July 1, 1993 to June 30, 1994.

Repectfully Submitted,

Scott Harshbarger
Attorney General

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
SCOTT HARSHBARGER

FIRST ASSISTANT ATTORNEY GENERAL
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CHIEF OF STAFF
Donald L. Davenport

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Gregory Massing 10
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Thomas McCormick
Ellen McGinty
Karen McGuire
Susan McHugh 55
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Paul McLaughlin
Kristine McMahon
Kevin McNeely
William McVey 55
William Meade
Elizabeth Medvedow
Joyce Meiklejohn
Howard Meshnick
Nicholas Messuri
Holley Meyer 4
James Milkey
Jonathan Mishara
Daniel Mitchell
Margaret Monsell 60
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Christopher Morog
Madelyn Morris
Susan Motika
Mark Muldoon
Timothy Mullen
Robert Munnelly
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Linda Murphy
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Kevin Nasca
Paula Fox Niziak
Michelle O'Brien
Thomas O'Brien 1
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Donna Palermino

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Djuna Perkins
Mary Phillips
William Porter
Cristina Poulter 10
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Mark Smith
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Neil Tassel
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Jane Tewksbury 54
Jean Thompson
Jeffrey Tocchio

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Bruce Trager 11
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John Van Lonkhuyzen
Lucy Wall
Beverly Ward
Rebecca Webb
George Weber
Mark Weber
Joseph Whalen, III 12
James Whitcomb
Douglas Wilkins
Jane Willoughby
John Woodruff 18
Norah Wylie
Judith Yogman
Pamela Young 51
Andrew Zaikis
Catherine Ziehl

Assistant Attorneys General Assigned To The Department of Employment & Training:

Brian Burke
Joshua Krell 17
Glenn MacKinlay 3
Jean O'Brien 16
Patricia Preziosa

APPOINTMENT DATE		TERMINATION DATE	
1.	07/18/94	50.	07/01/94
2.	08/01/94	51.	07/08/94
3.	08/08/94	52.	07/15/94
4.	08/15/94	53.	08/02/94
5.	08/17/94	54.	08/12/94
6.	08/29/94	55.	08/17/94
7.	09/06/94	56.	08/24/94
8.	09/12/94	57.	09/09/94
9.	09/19/94	58.	09/16/94
10.	09/20/94	59.	09/30/94
11.	09/26/94	60.	10/11/94
12.	10/03/94	61.	10/28/94
13.	10/17/94	62.	11/18/94
14.	10/24/94	63.	11/26/94
15.	10/31/94	64.	12/27/94
16.	11/14/94	65.	12/30/94
17.	11/22/94	66.	01/13/95
18.	11/28/94	67.	01/20/95
19.	12/05/94	68.	01/25/95
20.	01/19/95	69.	01/28/95
21.	01/30/95	70.	01/31/95
22.	02/01/95	71.	02/10/95
23.	02/06/95	72.	02/17/95
24.	02/27/95	73.	02/28/95
25.	03/01/95	74.	03/31/95
26.	03/06/95	75.	04/28/95
27.	03/13/95	76.	05/05/95
28.	06/01/95	77.	05/31/95

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DEPARTMENT OF THE ATTORNEY GENERAL
STATEMENT OF THE FINANCIAL POSITION
FOR FISCAL YEAR ENDED
JUNE 30, 1994

Account	Account Name	Appropriation	Advances	Encumbrances	Expenditures	Balance
0810-0000	Administration	$13,514,890	0	0	$13,464,573	$50,317
0810-0014	Public Utilities Auth.by Ch.1221 1973	$1,355,145	0	0	$1,306,385	$48,760
0810-0021	Medicaid Fraud Control Unit	$1,372,441	0	0	$1,344,200	$28,241
0810-0031	Local Consumer Aid Fund	$605,393	0	0	$595,900	$9,493
0810-0035	Anti-Trust Division Administration	$321,631	0	0	$320,799	$832
0810-0045	The Wage Enforcement Program	$1,638,800	0	0	$1,615,613	$23,187
0810-0201	Insurance Auth. by Ch.266, 1976	$1,170,000	0	0	$1,148,890	$21,110
0810-0338	Auto Insurance Fraud by Ch.338, 1990	$100,172	0	0	$98,844	$1,328
0810-0399	Workers' Comp.Fraud by Ch.399, 1991	$184,334	0	0	$171,768	$12,566
0810-1031	Victim/Witness Assistance	$120,685	0	0	$120,615	$70
0830-0100	Com on Uniform State Laws,Admin & Expenses	$27,900	0	0	$25,574	$2,326

DEPARTMENT OF THE ATTORNEY GENERAL
STATEMENT OF THE FINANCIAL POSITION
INTERDEPARTMENTAL SERVICE AGREEMENTS
FOR FISCAL YEAR ENDED
JUNE 30, 1994

Account	Account Name	Appropriation	Advances	Encumbrances	Expenditures	Balance
0810-0020	Criminal Tax Unit Alloc. of 1201-0100	$195,000	0	0	$188,041	$6,959
	by Ch. 164, Acts of 88					
0810-0300	Enforcement of Smoking Related Laws	$20,000	0	0	$19,432	$568
	Alloc. of 4590-0300					
0810-0420	G.I.C. Benefit Determinations	$20,000	0	0	$20,000	$0
	Alloc. of 1108-5200					
0810-0500	Environmental Strike Force Att.Gen.	$46,680	0	0	$46,679	$0
	C.304, 1987 Alloc. 2260-8880					
0810-0700	Massport Asbestos Litigation	$132,000	0	0	$132,000	$0
0810-6630	Water Pollution Control Program	$6,760	0	0	$0	$6,760
0810-6631	Air Pollution Control Program	$2,339	0	0	$0	$2,339
0810-6647	Hazardous Waste Enforcement	$15,400	0	0	$455	$14,945
	Alloc of 2200-9704					
0810-6652	Elder Abuse Alloc.of 8600-0009	$67,500	0	0	$67,463	$37
0810-7843	Asbestos Property Litigation	$150,000	0	0	$148,589	$1,411
	Alloc. of 1102-7843					
0810-7872	Asbestos Property Litigation	$259,763	0	0	$259,763	$0
	Alloc. of 1102-7872					
0810-9115	MHD Expenses Incurred by AGO	$150,000	0	0	$139,000	$11,000
	Central Artery/Tunnel C.33,'91(Alloc 6033-9115)					
0810-9116	MHD Expenses Incurred by AGO	$475,000	0	0	$383,057	$91,943
	Central Artery/Tunnel C.33, '91(Alloc 6033-9116)					
0810-9117	MHD Expenses Incurred by AGO Non Federal	$200,000	0	0	$197,983	$2,017
	Aid Project C.33,'91 (Alloc 6033-9117)					
0810-9707	Water Pollution Control Enforcement Activity	$35,000	0	0	$35,029	($29)
	(Alloc of 2240-9707)					
0810-9710	Air Pollution Control Prgm Enforcmt	$50,000	0	0	$23,827	$26,173
	(Alloc of 2250-9710)					

DEPARTMENT OF THE ATTORNEY GENERAL
TRUSTS
RECEIPTS AND DISBURSEMENTS
FOR FISCAL YEAR ENDED
JUNE 30, 1994

Account	Account Name	Appropriation	Advances	Encumbrances	Expenditures	Balance
0810-0033	Local Consumer Aid Fund	$1,496,004	0	0	$729,012	$766,993
0810-0414	Forfeited Funds (Ch94C,S.17)	$258,388	0	0	$216,524	$41,864
0810-0415	Expendable Trust (Ch.12,S.4a,6a)	$62,839	0	0	$12,106	$50,733
0810-0416	Conference and Training	$75,433	0	0	$53,790	$21,643
	(Ch.12, S.4a, 6a)					
0810-0444	Forfeited Funds-Federal Equitable Sharing	$700	0	0	$0	$700
0810-0526	Att.Gen. Unclaimed Minimum Wage Claims	$242,047	0	0	$112,558	$129,489
0810-6614	Attorney General Trust Fund	$80,732	0	0	$0	$80,732
0810-6661	Coastal Zone Mmgt.Prgm.Implmt.(CZMPI)	$2,693	0	0	$0	$2,693

SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS
FOR FISCAL YEAR ENDED
JUNE 30, 1994

Account	Account Name	Appropriation	Advances	Encumbrances	Expenditures	Balance
0810-6732	Thomas C. McMahon v. Nyanza	$3,679	0	0	$3,679	$0
0810-6862	Century Auto Appraisers, Inc.	$6,800	0	0	$0	$6,800
	R.B.Stone & Peter Slate					
0810-6885	Eric Bartlett d/b/a Bartlett Assoc.&Bartlett Financial Co.	$2,000	0	0	$0	$2,000
0810-6887	Bruce Ledbury d/b/a Cars International	$11,287	0	0	$0	$11,287
0810-6915	North Shore Roommates Service	$1,088	0	0	$0	$1,088
0810-6917	Diamond Chevrolet	$7,396	0	0	$0	$7,396
0810-6919	Rusty Jones Inc.	$2,263	0	0	$0	$2,263
0810-6921	Business Educational Services, Inc.	$90,884	0	0	$1,902	$88,982
0810-6925	Economy Auto Sales	$7,137	0	0	$0	$7,137
0810-6930	Womens World Health Spa	$20,000	0	0	$0	$20,000
0810-6934	Village Truck Sales, Inc.	$69	0	0	$0	$69
0810-6941	Lee Auto Sales	$3,302	0	0	$0	$3,302
0810-6943	William Wolf	$518	0	0	$0	$518
0810-6944	Miller Furniture Outlet	$466	0	0	$0	$466
0810-6946	Tijuana Goldstein Star, et al	$2,032	0	0	$0	$2,032
0810-6947	Ray's Auto Body	$23,500	0	0	$0	$23,500
0810-6950	Abrams et al vs Hertz Corp.	$4,584	0	0	$0	$4,584
0810-6952	Missions of Mercy, Inc.	$1,865	0	0	$0	$1,865
0810-6953	Outdoor World, Inc.	$16,474	0	0	$0	$16,474
0810-6954	European Health Spa	$1,323	0	0	$0	$1,323
0810-6957	Michael Collins	$902	0	0	$0	$902
0810-6958	Joy Of Movement	$2,713	0	0	$1,173	$1,541
0810-6959	Stephen J. Favorito	$2,084	0	0	$2,083	$1
0810-6960	Craftmatic/Contour, et al	$19,307	0	0	$4,395	$14,912
0810-6962	Trottier	$2,626	0	0	$898	$1,729
0810-6964	Valley Furniture, et al	$20,296	0	0	$0	$20,296
0810-6965	Home Repair, Inc., et al	$80,366	0	0	$80,365	$1
0810-6966	Raymond A. Noyes	$2,500	0	0	$0	$2,500
0810-6967	Getty Petroleum	$75,000	0	0	$0	$75,000
0810-6968	Teknor Apex Co., Inc	$125,000	0	0	$0	$125,000
0810-6969	Ronald J. Mastalerz,d/b/a Bay State Bathtub Liners	$2,500	0	0	$2,500	$0
0810-6970	Pampalone	$1,000	0	0	$997	$3
0810-6971	Advanced Financial Services, et al	$35,000	0	0	$35,000	$0
0810-6972	Labonte	$20,000	0	0	$0	$20,000
0810-6973	Robert Haynes Jr. & Sr.	$3,827	0	0	$3,827	$0

0810-6974	Markline International, Inc.	$9,069	0	0	$8,404	$665
0810-6975	Direct American Marketers, Inc	$150,000	0	0	$0	$150,000
0810-6976	Nelly Gutierrez	$5,000	0	0	$0	$5,000
0810-6977	New Horizons, Inc and Stanley M. Jacobs	$12,000	0	0	$12,000	$0
0810-6978	Via Brazil, Inc	$4,985	0	0	$4,985	$0
0810-6979	National Financial Corp	$15,000	0	0	$0	$15,000
0810-6980	Roy Parkes d/b/a Shoppers Samples	$2,200	0	0	$0	$2,200
0810-6981	Escape to Fitness Center	$23,857	0	0	$22,449	$1,408

CRIMINAL BUREAU

The Criminal Bureau is responsible for prosecuting individuals and corporations for violations of the criminal laws in courts at all levels throughout the Commonwealth. In addition, the Bureau represents the Commonwealth's judges, district attorneys, probation, parole, and corrections officials when they are sued civilly in state and federal court by prisoners challenging their criminal convictions or the terms of their confinement.

The Bureau is comprised of 64 prosecutors and approximately 82 support staff, including secretaries, paralegals, and financial investigators. In addition, a Massachusetts State Police unit consisting of 30 state troopers is assigned to the Bureau to investigate allegations of criminal wrongdoing across the state.

The Criminal Bureau is organized among seven divisions: the Narcotics and Special Investigations Division, the Public Integrity Division, the Environmental Crimes Strike Force, the Medicaid Fraud Control Unit, the Appellate Division, the Economic Crimes Division, and the Fair Labor and Business Practices Division. These seven divisions of the Criminal Bureau are grouped generally by area of practice and type of crime prosecuted. The work of each of these divisions during fiscal year 1994 is described in the following pages.

There were two major organizational changes in the Criminal Bureau in fiscal year 1994. First, the Narcotics and Organized Crime Division and the former Special Investigations Unit were merged into one division, in order to best utilize state police resources for those investigations which overlap each of those two related subject areas. Second, the Fair Labor and Business Practices Division was formed in October, 1993 following the statutory transfer to the Attorney General of many of the responsibilities of the Department of Labor and Industries.

Many Assistant Attorneys General assigned to the Criminal Bureau practice in more than one division, although for management and supervision purposes they are assigned to one major area of responsibility. Each division is managed by a Division Chief, who both supervises the work of the attorneys and investigators assigned to that division and serves as senior prosecutor. The Bureau is lead by a Bureau Chief and Deputy Bureau Chief, who manage the work of the seven divisions and advise the Attorney General on law enforcement policy and anti-crime initiatives.

In 1994, The Criminal Bureau spearheaded the Attorney General's Safe Neighborhood Initiative, a unique partnership of law enforcement and community leaders working together to bring peace to one of Dorchester's most violent neighborhoods. As part of this program, two Assistant Attorneys General have been assigned to the Suffolk County District Attorney's office to prosecute, on a community policing model, violent crimes and

narcotics offenses which occur in this defined urban area. Also as part of the Attorney General's urban violence strategy, an additional Criminal Bureau attorney serves as a Special Suffolk County Assistant District Attorney prosecuting gang-related cases in Suffolk County Superior Court, and four Assistant Attorneys General serve 4 month rotations in Dorchester, Roxbury, Brockton, and Lawrence District Courts.

In addition to the regular litigation engaged in by the Bureau in each of the above-referenced areas, Assistant Attorneys General in the Criminal Bureau are sometimes called upon to prosecute those cases involving traditional violent crime (homicide, rape, armed robbery, etc.) which are referred to the Office of the Attorney General by the state's District Attorneys due to a conflict of interest on the part of the local prosecutor. In fiscal year 1994, the Criminal Bureau investigated and prosecuted 10 conflict cases referred by the District Attorneys.

Finally, the attorneys of the Bureau are regularly called upon to render informal legal advice to police departments and to law enforcement officials across the state on criminal law matters. The Bureau is responsible for publishing quarterly a law enforcement newsletter to advise judges, police officers, and prosecutors on statutory and case-related developments in the area of criminal law. Finally, the Appellate Division of the Criminal Bureau periodically files amicus briefs in the United States Supreme Court, the Massachusetts Supreme Judicial Court, and the Massachusetts Appeals Court setting forth the position of the Attorney General, as the state's chief law enforcement officer, on important and novel criminal law issues.

In almost every division of the Criminal Bureau in fiscal year 1994, there were increases in the number of investigations initiated, the number of charges brought, the number of convictions secured after trial, the number of appellate briefs filed, and the amount of money recovered for the Commonwealth. The statistics which follow reflect not only the intense effort put forth by the Criminal Bureau attorneys, investigators, and support staff, but also the Bureau's commitment to making a difference for the citizens of Massachusetts in the areas of private and public sector fraud, elderly protection, health care, and urban violence.

APPELLATE DIVISION

The Appellate Division handles a variety of criminal, federal habeas corpus, state habeas corpus and other civil cases which impact criminal prosecutions, and the criminal justice system itself. During the period from July 1, 1993 through June 30, 1994, the following Assistant Attorneys General from both within and without the Division, handled Appellate Division cases: Elisabeth Medvedow, Neil Tassel, Bill Meade, Bill Duensing, Greg Massing, Ellyn Lazar, Bob Sikellis, LaDonna Hatton, Nancy Geary, Linda Nutting Murphy, Kris Guyot, Ed DeAngelo, Molly Parks, Carol Lee Rawn, Walter Sullivan and Pamela Hunt.

The Division handled approximately 650 cases during the course of the year, which was about the same total number of cases as in FY 1993. Over 300 new cases were opened in FY 1993, an 11% decrease from the previous year, but which remains well above the number of cases opened in FY 1991 (161 cases) and FY 1992 (222 cases). Two hundred and thirteen (213) cases were disposed.

In addition to case work, Division Attorneys participate and present training programs for the Criminal Bureau, and consult with other Criminal Bureau attorneys on a variety of investigative, motion, trial, post conviction, and single justice matters. The Law Enforcement Newsletter is produced and edited in the Appellate Division. Additionally, Assistant Attorney General Neil Tassel participated in the Urban Violence program by spending four months prosecuting cases in Dorchester District Court.

I. SUMMARY OF FY 1994 APPELLATE DIVISION CASE ACTIVITY

A. Cases Handled

	Cases Opened	Cases Disposed	Total Cases Handled
A. Federal Habeas	83	58	158
B. Federal Civil	30	18	58
C. State Habeas	43	31	84
D. State Civil	78	62	214
E. 211 § 3 and other Single Justice cases	18	14	28
F. Criminal	46	26	87
G. Other	9	4	12
	307	213	652

The following is a comparison of case activity for the Appellate Division for the last several years:

	FY 1994	FY 1993	FY 1992	FY 1991
TOTAL CASES OPENED	307	351	222	161
TOTAL CASES DISPOSED	213	282	206	N/A
TOTAL CASES HANDLED	652	649	428	N/A

	FY 1994	FY 1993	FY 1992
B. Appellate Briefs Filed By Court	54	52	56
U.S. Supreme Court	2	4	7
Court of Appeals (First Circuit)	14	7	10
U.S. District Court (Bankruptcy Appeals)	0	2	0
SJC	14	13	7
Appeals Court	26	26	32
By Case Type			
Criminal	19	20	26
Federal Habeas	13	7	11
Civil/State Habeas	24	25	19

C. Renditions: Governor's Warrants Reviewed - 199

D. SAAG Supervision: Parole Board
Treatment Center

II. CASES HANDLED

A. Federal Habeas Corpus

During the course of the fiscal year, the Appellate Division carried a total of 158 habeas corpus cases. Eighty-three new cases were opened and 58 were disposed. The Commonwealth is only required to defend against petitions for which there is an order by the federal court to answer the petition.

All but two cases decided during FY 1994 were successful, although we also pursued an appeal from an unfavorable decision issued last year. Appeals to the First Circuit Court of Appeals were taken in all cases in which the writ was ordered to issue; the cases were argued, and are currently under advisement. In one case we were successful in having the court deny habeas relief to William Gilday, who was convicted of the murder of a Boston police officer.

B. Federal Civil Cases

The Appellate Division handled 58 federal civil matters, which primarily involve civil rights actions brought against state judges, prosecutors, probation officers and other criminal justice system officials. Several cases involve representation of prosecutors who have been subpoenaed to testify or to produce their investigative or trial files.

In Cameron v. Tomes there was an evidentiary hearing on a petition seeking to hold Treatment Center officials in contempt of a number of orders relating to treatment and conditions of confinement. The Division also represents District Attorneys in a number of actions including one case where plaintiff's decedent alleges that the District Attorney encouraged the media to identify plaintiff as a suspect in the Highway Serial Killer case which then led to plaintiff's suicide. In several matters we represent state prosecutors who have been subpoenaed as witnesses, or have intervened on behalf of state prosecutors to protect the integrity of ongoing state criminal proceedings.

C. State Civil/Habeas Corpus Cases

During FY 1994, the Appellate Division handled 84 state habeas corpus actions filed by prisoners seeking immediate release from confinement in such matters as attacks on commitments to the Treatment Center, challenges to the validity of Governor's warrants, and claims that probation or parole surrenders were invalid. The Appellate Division's civil case load (78 cases) includes appeals from denial of petitions for release filed by those committed to the Treatment Center under G.L. c. 123A, § 9, and appeals in all cases handled in the trial courts by agency counsel at the Parole Board as Special Assistant Attorneys General.

The majority of state civil cases involve representation of prosecutors, and judges sued for their official actions, but in an increasing number of cases we have either intervened in civil cases on behalf of the Attorney General or District Attorneys or have moved for protective orders or to quash subpoenas served on prosecutors. In one case (McNeil v. DuBois) we assisted the Department of Correction in obtaining a stay pending appeal of an order granting automatic earned good time credits to all prisoners who were in custody prior to trial, and then wrote an amicus brief on behalf of the Attorney General and the Parole Board seeking reversal of that order.

Among the state habeas corpus cases was Kater v. Parole Board in which we argued that a parole violation detainer lodged in 1978 against a murder defendant had never gone into effect, thereby preventing his release even after he posted bail prior to his third trial. There were also cases in which parole violators claimed the Board waived jurisdiction over them by not seeking their return to Massachusetts at an earlier time.

D. Criminal Cases

While the majority of criminal cases handled by the Appellate Division are appeals from convictions in prosecutions by the Attorney General's Office, some cases have been referred by a District Attorney's Office because of conflict of interest (Nettis, Connolly), or which we agreed to handle on appeal (Payton). Additionally, the Commissioner of Probation has been represented in a number of cases where a former criminal defendant has sought expungement of court and probation records. There are also a number of cases in which those committed to the Treatment Center by the sentencing court have moved for release under Criminal Rule 30(a). In one criminal case a subpoena served by a criminal defendant on the Governor's office to produce all notes and information concerning the Governor's appointment of a judge was quashed. In another case, we successfully represented an Assistant District Attorney against whom a criminal contempt charge was sought.

In the United States Supreme Court an opposition to a petition for certiorari in a drug trafficking case prevailed, and the Division wrote an amicus brief on behalf of the states in a case where the language of the "Webster" reasonable doubt instruction was being challenged. An unfavorable ruling by the Supreme Court could have had adverse consequences for all Massachusetts convictions.

E. G.L. c. 211, § 3 and Other Single Justice Matters

The Appellate Division successfully defended a case brought by the press seeking the names and addresses of seated jurors in a criminal case, and also defended a Superior Court order forbidding Court Television from broadcasting daily summaries of an ongoing murder case. In other cases, a District Court clerk was represented in an action brought by a criminal defendant seeking criminal process against the victim and others, and the constitutionality of the "gatekeeper" provisions of G.L. c. 278, § 33E for murder cases was argued.

Representing the Norfolk District Attorney's Office, the Division filed an action under G.L. c. 211, § 3 seeking reversal of an order that an Assistant District Attorney turn over his personal notes made after an interview with a victim in a rape case, to the parties in a civil case, and arguing that a District Attorney need not suffer a finding of contempt to obtain review of such an order.

F. Other

The Federal District Court ruled in our favor in two appeals we took from Bankruptcy Court rulings ordering stays of state criminal prosecutions for failure to pay wages. We also successfully argued to a California court that it could not

review the propriety of a Massachusetts conviction which was being used as an enhancement in a California prosecution.

The Appellate Division was involved in filing an action in the Supreme Judicial Court under G.L. c. 211, § 4A, on behalf of the Governor and Attorney General to remove the Sheriff of Middlesex County (Weld v. McGonigle).

III. BRIEFS FILED

The Appellate Division filed 54 briefs during FY 1994, in the United States Supreme Court (2); First Circuit Court of Appeals (14); Supreme Judicial Court (14) and Massachusetts Appeals Court (24). Of these, 19 were in criminal matters, 13 in federal habeas corpus cases and 24 in various civil actions, SDP cases, or state habeas cases.

An amicus brief was filed in the United States Supreme Court on behalf of the states in Sandoval v. California, (and Victor v. Nebraska), defending the constitutionality of the "Webster" instruction on reasonable doubt, and various formulations of reasonable doubt instructions given in other states' criminal cases.

Briefs filed in the United States Court of Appeals in federal habeas corpus cases doubled the number written last year. In three cases, appeals were taken from District Court orders granting writs of habeas corpus: Scarpa involved a claim of ineffective assistance of counsel in a cocaine trafficking case; Stewart alleged insufficiency of evidence in a murder case; and Beauchamp concerned whether a murderer who escaped from prison would be given credit for time spent fighting extradition after he was captured out of state. All three cases are under advisement. All First Circuit cases which have been decided were successful, including Libby which challenged a presumed malice instruction in a 1971 trial; Sabetti, in which the Court found the state drug trafficking statute constitutional; and Ortiz, upholding a conviction for the murders of two Springfield police officers.

This year a number of briefs were filed in the Supreme Judicial Court, including two important cases concerning sexually dangerous persons (Redgate) (Gagnon); a public records case involving homicide and police internal affairs investigative materials (Globe); a criminal case which raises the issue whether there is any authority to order "expungement" of court and probation records where the legislature has provided only for sealing (Balboni); and a civil case which held that police officers are not liable under the Tort Claims Act for their decisions in deciding how to investigate crimes and when to arrest or seek criminal process (Sena).

The Appellate Division's amicus efforts in the SJC this year included a brief addressing the question whether defendants are entitled to attorneys fees for opposing the Commonwealth's efforts to appeal the allowance of a new trial in murder cases (Latimore), and a brief filed on behalf of the Attorney General and the Parole Board challenging a Superior Court injunction that ordered the automatic granting of "earned" good time credits to all state prisoners who spent time in custody prior to their convictions (McNeil). In both cases, the Court adopted the arguments we made. The office also responded to the Court's request for comments on the proposed One-Trial Rules for the District Courts, and argued the matter before the full court.

The Division wrote twenty-four briefs in the Appeals Court, involving a number of criminal cases prosecuted by the Criminal Bureau, including narcotics cases, criminal contempt, and tax evasion. In a prosecution of a police officer for operating under the influence and causing serious bodily injury, an appeal of the lower court's dismissal of the charges was successful. (Connolly). There also were a number of appeals in cases ordering the continued commitment of sexually dangerous persons, and in civil cases in which prisoners challenged the authority of the Parole Board to violate their parole. We were unsuccessful in three cases. In two of those, further appellate review was obtained, one of which, concerning peremptory challenges, is currently scheduled for argument in the SJC. In the other, the SJC declined to reverse its recent decision addressing the unconstitutionality of committing certain individuals to the Treatment Center.

IV. RENDITIONS

Attorneys from the Criminal Bureau, at the request of the Governor's office, review the legal sufficiency of applications for Governor's warrants, both at the request of other states and by Massachusetts District Attorneys, and Department of Correction and Parole Officials. From July 1, 1993 through June 30, 1994, 199 different cases were reviewed. Whenever a person arrested on a Governor's warrant challenges the validity of the warrant, Criminal Bureau attorneys handle the habeas corpus cases in the trial and appellate courts.

V. OTHER ACTIVITIES

- Assistant Attorney General Pamela Hunt was appointed by the Governor to the Massachusetts Sentencing Commission.

- Division attorneys sat as hearing officers for the Board of Appeals of the Registry of Motor Vehicles.

- Assistant Attorney General Hunt sits as the Attorney General's representative on the Criminal History Systems Board.

- Assistant Attorney General Hunt is a member of the Supreme Judicial Court's Standing Advisory Committee on the Criminal Rules.

- Assistant Attorneys General Hatton and Hunt participated in Chief Justice Zoll's Committee on One-Trial Rules.

- Assistant Attorney General Hunt was a member of Chief Justice Steadman's committee on ADR for prisoner cases.

- The Division provides information to the Parole Board relevant to its consideration of pardon and commutation matters and for parole decisions in second degree murder cases.

- Assistant Attorneys General Hatton and Hunt worked with Chief Justices Fenton, Zoll and Tierney concerning the implementation of Jenkins, which requires a system by which individuals arrested without a warrant are to be given a probable cause determination within 24 hours of arrest.

- Assistant Attorney General Hunt is a member of the Supreme Judicial Court's Advisory Committee on Use of Electronic Copies of Transcripts.

- Assistant Attorney General Hunt worked with South Shore Elder Services, elder service groups, and police from Hingham, Hull and Cohasset on an intergenerational project designed to protect elders living alone from violence and fraud, and assisted South Shore Elder Services in gaining CORI access to conviction data of home service providers.

- The Appellate Division attorneys periodically meet with the Governor's legal office staff in matters relating to Governor's warrants and extradition, various parole and corrections matters, and the impact of pending criminal justice legislative efforts.

VI. SPECIAL ASSISTANT ATTORNEYS GENERAL SUPERVISION

A. Parole Board

Agency counsel at the Parole Board are designated to handle a number of cases in the state trial courts. Appellate Division attorneys work closely with Board counsel in the defense of these matters, and handle all appeals in these cases. The Appellate Division is also involved in the many Parole Board cases which require coordination with the Department of Correction. Assistant Attorneys General from the Appellate Division and the Government Bureau defend all cases concerning the Parole Board in federal court.

During FY 1994, 60 new cases were referred to the Parole Board. Agency counsel disposed of 37 cases during that period.

B. Department of Mental Health

Counsel in DMH are currently designated to handle all SDP § 9 hearings in the Superior Court. Assistant Attorneys General in the Appellate Division handle all appeals in these cases and are involved in supervision and monitoring of the Superior Court hearings.

During the past year the Appellate Division was involved in a working group and in meetings with the Chief Justice of the Superior Court, Governor's Legal Counsel, the First Assistant and the Department of Mental Health addressing a number of issues surrounding the scheduling and conduct of § 9 hearings.

NARCOTICS AND SPECIAL INVESTIGATIONS DIVISION

During fiscal year 1993-1994, the Narcotics and Organized Crime Division and Special Investigations Division were consolidated. The role of the consolidated Narcotics and Special Investigations Division continues to focus on complex criminal enterprises with an expanded concentration on violent organized criminals dealing in narcotics and firearms. During fiscal year 1993-1994, the division handled a number of cases which were initiated by State Police assigned to the division as well as cases referred from local, state and federal law enforcement agencies. In addition, attorneys and investigators from the division have participated in a number of joint/task force investigations with local, state and federal agencies including the Federal Bureau of Investigation, Bureau of Alcohol Tobacco and Firearms, United States Postal Inspection Service, United States Secret Service, Internal Revenue Service and New Hampshire State Police along with United States Attorney's offices in Massachusetts, New Hampshire and Rhode Island and state prosecutor's offices in New Hampshire.

INVESTIGATIVE ACTIVITY

Investigations initiated	118
Individuals arrested	126
Defendants indicted	99

SEIZURES

Cocaine	32.9 lbs/526.4 oz
Heroin	21.08 oz
Marijuana	6.8 lbs/110 oz
Pharmaceuticals	over 15,000 tablets
Firearms	16 handguns 4 rifles/shotguns 2 assault weapons/machine guns
U.S. Currency	$100,931.00
Vehicles	31
Stolen Property	29 Oriental rugs, Recovered jewelry, silverware and antiques valued at over $200,000.

PROSECUTIONS

Criminal

Pre Trial		71
After Trial		18
	TOTAL	89
Convictions		82
Not Guilty		7
Dismissal		9
	TOTAL	98
Drug Related forfeiture Actions Filed in Superior Court		
	TOTAL	15
Forfeiture Judgments		
U.S. Currency Forfeited		$101,205.00
Vehicles Forfeited		5

Other Civil Forfeitures/Fines:

Commonwealth of Massachusetts
V.
AETNA Capital Management Inc.
AETNA Financial Services Inc.

Fine/Penalty	$500,000.00
Restitution	3.6 Million

SIGNIFICANT ACHIEVEMENTS

Narcotics

The continued focus of the division during the past fiscal year on organized narcotics distribution rings has resulted in a number of multi-defendant cases which have been successfully prosecuted. Many of those cases were the result of long term undercover investigations in which suspects distributed drugs to undercover officers. In an increasing number of those cases, undercover officers and surveillance officers have successfully identified others associated with that illegal operation and related criminal activities. In early 1994 three ringleaders of a cocaine and marijuana distribution organization plead guilty along with seven of their associates. As part of that case, indictments alleging filing false state income tax charges were brought against the primary distributor in that organization along with a civil forfeiture action for the defendant's real property.

Firearms/Violent Crimes

Thirteen defendants were apprehended and charged with illegally possessing and /or selling firearms. In one case, a suspect sold five firearms to an undercover officer including a Tec-9 machine gun/assault weapon. That suspect was arrested, convicted and is serving a state prison sentence. In another case, a suspect sold a handgun with a defaced serial number to an undercover officer in addition to quantities of cocaine and marijuana. That suspect was also arrested, convicted and is serving a state prison sentence. With increasing frequency, narcotics dealers are found to be armed with handguns when apprehended.

Inmate Crimes

In two separate cases, inmates serving sentences were charged with crimes which they committed while incarcerated. An inmate serving a sentence in state prison along with four accomplices were indicted for an alleged larceny scheme in which the inmate used stolen credit card account numbers to order clothing, computers and electronic equipment from retail stores by telephone for shipment to his accomplices who received those items at their residences. Those cases are pending in Superior Court. In another case, an inmate serving a sentence in a county House of Correction allegedly solicited an undercover agent to murder his former girlfriend in return for a cash payment. That case is also pending in superior Court.

Arson/Property Crimes

Ongoing cooperative efforts with the Federal Bureau of Alcohol, Tobacco and Firearms and State Fire Marshall's Office resulted in the indictment of eleven defendants in five separate cases for arson and related crimes during the past fiscal year. All of those cases are currently pending in Superior Court. In addition, attorneys and investigators from the division participated in a burglary task force with New Hampshire prosecutors and New Hampshire State Police to solve a series of home burglaries in New Hampshire and Massachusetts which resulted in the recovery of over $200,000 in stolen oriental rugs, jewelry and silverware and the indictment of the suspected ringleaders. Those cases were pending at the close of the fiscal year.

Mail Thefts/Check Cashing Ring

A joint investigation with the United States Postal Service resulted in the indictment of eleven defendants alleged to have been participants in a highly organized ring which utilized names, addresses and other identifying information from unsuspecting victims obtained from a series of mailbox burglaries. After obtaining that information, the defendants are alleged to have obtained false ID's in the names of those victims to cash stolen checks which the defendants forged and

cashed at area banks in the greater Boston area. Those cases were pending at the end of the fiscal year.

Organized Crime

During the past fiscal year, 29 defendants charged with a variety of illegal gaming and loansharking indictments plead guilty in Superior Court. Those indictments were based upon a joint investigation conducted by the division together with the Middlesex District Attorney's Office, State Police, Lowell and Wilmington Police during 1991 which utilized court authorized wiretaps. Sentences imposed ranged from committed state prison and house of correction sentences for the ringleaders to suspended sentences and probation for the soldiers in that organization over $75,000 in fines were imposed together with over $40,000 in costs in connection with those sentences. Three cases remain pending in Superior Court involving both gaming and cocaine trafficking charges.

Public Pension Investigation

In August 1993, a two year investigation by attorneys and investigators from the division in conjunction with the United States Attorney's Office in Boston, Massachusetts Securities Division and Federal Securities and Exchange Commission resulted in civil enforcement actions by each agency against AETNA Capital Management Inc. and AETNA Financial Services Inc. Those enforcement actions arose out of fraudulent activities by those firms in connection with payments to Carmen Elio, Robert Mongillo and an insurance firm owned by then Senator William Q. MacLean. In settling those enforcement actions, AETNA Capital Management Inc. and AETNA Financial services Inc. paid additional restitution of $3.6 million to 21 Massachusetts Public Employee Retirement Boards and paid a total of $1.5 million in penalties of which $500,000 was paid to the Commonwealth of Massachusetts.

Also in August 1993, Carmen Elio and State Senator Henri Rauschenbach were indicted for alleged violations of the state conflict of interest law in connection with Elio's payments to Rauschenbach during 1991 in return for Rauschenbach's assistance in presenting various investment and business proposals to state officials. That case is pending in Superior Court.

Drug Related Forfeitures

In the spring of 1994, as part of the forfeiture unit's continued efforts in "Operation Take Back" to identify and forfeit properties in which repeated drug violations have occurred, the division filed a civil forfeiture action in conjunction with the Middlesex District Attorney's Office seeking forfeiture of a Lowell bar located in the Acre section of that city. After a long history of drug violations by bar patrons and drug related crimes, State Police assigned to the division conducted a series of undercover drug purchases inside that

establishment which resulted in a number of arrests and criminal charges. In addition to seeking forfeiture of that property under the drug forfeiture law, the state public nuisance law (G.L. 139 s.16A) was utilized as an additional basis for the closing of that establishment by seeking an injunction against the operators of that establishment to prohibit continued illegal drug dealing in and around the premises. That civil action along with a number of others involving real property were pending in superior court at the end of the fiscal year.

URBAN VIOLENCE STRIKE FORCE

The Urban Violence Strike Force was organized in the spring of 1991 as part of Attorney General Scott Harshbarger's overall commitment to improving the quality of life for residents of the Commonwealth's urban communities.

During fiscal year 1994, the Attorney General continued his strong emphasis on combating urban violence. Indeed, the legal resources devoted to this effort within the Attorney General's office has been unprecedented in the history of this office. During this past fiscal year, three prosecutors from the Criminal Bureau and four Assistant Attorneys General from other bureaus in the office have been dedicated full-time to urban violence prosecution efforts.

The urban violence initiatives under the auspices of the Criminal Bureau are described below:

GANG UNIT INITIATIVE

During fiscal year 1994, the Criminal Bureau continued to devote resources to the Gang Unit in the Suffolk County District Attorney's Office. The Gang Unit's goal is to conduct priority prosecution of youthful offenders charged with violent crimes arising out of gang related activity, with a particular emphasis on crimes involving the distribution of drugs and/or the use of firearms. The Gang Unit works with the Boston Police Department Anti-Gang Violence Unit as well as with uniformed officers and detectives assigned to various police districts. In 1994, the Assistant Attorney General assigned to the Gang Unit handled over fifty Superior Court matters representing a variety of serious offenses, including armed assault with intent to murder, armed assault in a dwelling, armed robbery, dangerous weapon offenses, kidnapping and distribution of drugs. As a result of direct indictments and aggressive prosecution of these youthful offenders, our Assistant Attorney General disposed of over thirty cases by guilty pleas or findings of guilt after trial, and secured the incarceration of a number of major violators which has made a contribution to the reduction of gang related violence in Boston.

SAFE NEIGHBORHOOD INITIATIVE

The Safe Neighborhood Initiative (SNI) is the outgrowth of a three-year partnership between the offices of the Attorney General and the Suffolk County District Attorney. In February 1991, the Attorney General assigned three full-time Assistant Attorneys General to work with the Suffolk County District Attorney's Office prosecuting major violent felonies and gang-related offenses. This unit of attorneys was responsible for prosecuting hundreds of cases directly resulting from urban violence.

While this contribution to existing prosecution efforts and infusion of additional resources were helpful, both Attorney General Scott Harshbarger and District Attorney Ralph Martin agreed that the problems facing our urban neighborhoods demand a comprehensive, multidisciplinary approach, namely, a collaborative effort between law enforcement (police, prosecution, the courts, probation, youth services), human services and the community to effectively deal with escalating violence and fear that threaten the quality of life in Boston's neighborhoods.

To accomplish these ends, on February 22, 1993, the SNI was formed as a pioneering partnership among community residents, the Attorney General's Office, the District Attorney for Suffolk County, the Boston Police Department and the Mayor's Office of Neighborhood Services.

The overall mission of the SNI is to bring law enforcement and community organizations together in a coordinated way that will assist in revitalizing a neighborhood plagued by a variety of societal problems.

The SNI brings increased law enforcement and prosecutorial efforts to a designated geographical area. The target area designated for this project consists of the residential and business areas of Fields Corner, Bowdoin Street, Four Corners and Geneva Avenue in Dorchester. This area was chosen as the target area for the SNI based on the high incidence of urban crime (gang-related violence and drug distribution), the intensive concentration of investigative and prosecution efforts within one police district and district court, as well as the level of existing community-based programs and neighborhood crime watch groups. By concentrating on one geographical area, the SNI has demonstrated the tangible results achieved when residents, law enforcement and human service representatives join together to free a neighborhood from violence's iron grip and improve the quality of life for all.

In 1994, the SNI unit screened over 1300 cases, ranging from misdemeanors to major violent felonies, and accepted approximately 127 cases for prosecution. Over 35 of the most serious cases were directly indicted in Superior Court and have resulted in a substantial number of convictions and the imposition of lengthy prison terms. Approximately 90 cases were handled by the unit in Dorchester District Court, with many committed sentences being imposed. During the year, the SNI unit provided assistance to a number of law enforcement agencies, including the Immigration and Naturalization Service in immigration and deportation proceedings in Dorchester District Court.

The Safe Neighborhood Initiative Unit also worked with local community development groups, private institutions, and state and local representatives to target abandoned property within the

area for rehabilitation and re-sale. As part of the Safe Neighborhood Initiative, the Attorney General's Office worked with the Boston Police and telephone companies to remove pay telephones that have been used as a haven for drug and gang activity within the target area, and has worked with local communication companies to remove billboards that depict violence. The Attorney General's Office worked closely with the Safe Neighborhood Initiative Advisory Council and community groups, including business groups and crime watch groups, to address criminal activity and other community issues. This office's Student Conflict Resolution Experts (SCORE) program has been implemented in the Grover Cleveland Middle School in the target area and in Dorchester High School.

Recently, the Attorney General's Office was awarded a $382,972.00 grant by the Massachusetts Committee on Criminal Justice. This grant will enable the SNI participants and community residents to expand the project in three core areas of crime prevention and reduction. Specifically, the funding for the SNI is for; 1. Coordinated Law Enforcement which will allow expanded police presence and surveillance and expanded prosecution efforts; 2. Neighborhood Revitalization efforts including the funding of "This Neighborhood Means Business!", an innovative education program for small business owners; and 3. Violence Prevention and Treatment including a number of programs designed to help prevent crime and violence from occurring in the target area.

URBAN COURT STRIKE FORCE

The Urban Court Strike Force is a four month rotation program which affords Assistant Attorneys General an opportunity to prosecute cases in urban district courts. During FY 1994, sixteen AAG's participated in rotations in Brockton, Lawrence, Roxbury and Dorchester District Courts. The contribution to existing prosecution efforts has been extremely helpful to the District Attorney's Offices and the program has served as an invaluable learning tool for the AAGs who have participated. During this fiscal year, the Urban Court Strike Force rotation lawyers were responsible for prosecuting hundreds of cases directly resulting from urban violence.

The Criminal Bureau Assistant Attorneys General who were assigned to these urban violence initiatives during fiscal year 1994 are Paul McLaughlin, Marcia Jackson, Linda Sable, Abbe Ross, Carol Lee Rawn, Neil Tassel, Glen MacKinlay, Patricia Preziosa and Elisabeth DiTomassi.

In 1994, members of the Criminal Bureau also provided assistance in other criminal justice/urban violence related projects. Members of the Bureau assisted Attorney General Scott Harshbarger who co-chairs the Criminal Justice/Law Enforcement Task Force of the Boston Coalition, a coalition of law enforcement, criminal justice, substance treatment, religious and business leaders. As a result of this collaboration and with the infusion of a recently received grant, the Boston Coalition will now move forward on its proposal to create a drug diversion court for drug and alcohol addicted offenders in our urban communities. Members of the Criminal Bureau also assisted Attorney General Harshbarger, who co-chaired with Governor William Weld and Lieutenant Governor Paul Cellucci a series of Urban violence Summits, whose goal is to find ways to improve coordination, communication and performance throughout our criminal justice system. A number of successes were achieved as a result of these summit meetings including making significant progress in the area of default warrant management. Also, as a result of the dedicated work of the legislative sub-committee of the Summit, a comprehensive legislative proposal has been filed which upon passage will establish an electronically-based warrant management system in our criminal justice system.

ENVIRONMENTAL STRIKE FORCE

I. SETTING A NEW BENCHMARK IN CRIMINAL ENVIRONMENTAL ENFORCEMENT

The Massachusetts Environmental Strike Force continued to perform as a relatively unique enforcement tool for the investigation and prosecution of environmental crimes in Massachusetts. The Strike Force continued its activities through the cooperative efforts of the Attorney General, Secretary of Environmental Affairs, Department of Environmental Protection, Environmental Police, and State Police. The Strike Force unit operating out of the Criminal Bureau of the Attorney General's Office included four criminal prosecutors, five environmental police officers, one state police officer, one civil investigator, and one support staff person. In addition, the Strike Force's emphasis on coordination with other government agencies resulted in significant case contributions by the Department of Labor and Industries, the Division of Occupational Hygiene, the Massachusetts Water Resources Authority, and others.

In Fiscal Year 1994, the criminal Strike Force cases resulted in significant and creative dispositions designed to promote environmental protection throughout the commonwealth. In one case, a state record $500,000 was paid by a defendant to create a new fund, administered by faculty at the University of Massachusetts at Lowell, to improve work environments across the state. In another case, a defendant was ordered to pay for the placement of an advertisement in a widely distributed furniture manufacturers' trade journal, to make the point that improper handling of hazardous waste can result in criminal prosecution. In a third case, a Superior Court judge agreed with the Commonwealth that the operator of an illegal tire dump in western Massachusetts had failed to implement measures which would protect public safety and the environment, and sent the defendant to jail under an eighteen month sentence, a record under the state's Solid Waste Management Act. These and other cases served to set a new benchmark in criminal environmental enforcement in Massachusetts.

II. CRIMINAL CASES

Com. v. Bay State Smelting Co., Inc., Gerald Sack, and David Traister: This Somerville smelting company, its president, and its plant manager all pled guilty to indictments charging storage of hazardous waste in a manner which could endanger human health, and in a manner which violated Department of Environmental Protection regulations. A two year investigation, prompted by a report of the state's Division of Occupational Hygiene, revealed that toxic lead dust was released by the company into its plant because of inadequate and poorly maintained ventilation and illegal and improper work practices. Bay State's sentence included payment of $500,000 for the creation of the Work Environment Justice Fund, and a special condition of probation

requiring the company to remain in compliance with the judgment entered in a parallel civil case brought by the state against the company. The Fund, to be administered by faculty of the Work Environment Program of the University of Massachusetts at Lowell, will promote education, prevention and advocacy efforts in the area of workplace health and safety. Each of the individual defendants was sentenced to 750 hours of alternative punishment, to be completed during their one year terms of probation. The civil judgment required the company to quickly correct existing violations, maintain facility cleanliness, and pay substantial stipulated penalties if it fails to do so.

Com. v. Salvatore Benanti and Eric Schaeffer:

Each of these defendants pled guilty to multiple indictments charging illegal disposal of solid waste. In addition, Schaeffer was convicted of larceny, leasing with intent to defraud, and wanton injury of property. The convictions completed the Strike Force's successful prosecution of several individuals who represented themselves as being in the tire recycling business while dumping thousands of junk tires on private properties in a half-dozen Boston area communities. Benanti was sentenced to 2 years probation, 2,000 hours of community service, and ordered to make $100,000 in restitution. Schaeffer was ordered to pay a $10,000 fine over a three year period of probation.

Com. v. BENU Corp. and Larry S. Franggs:

Grand juries in Worcester and Middlesex counties returned indictments against this Ohio corporation and its president for illegal transportation of hazardous waste in connection with a state contract to repaint highway bridges. The contract required BENU to sandblast the old paint off of the bridges, and to arrange for transportation of the lead contaminated sandblast waste by a licensed hauler. BENU was found guilty in both counties, and a total of $300,000 in fines were imposed. The charges against Frangos, which also include forgery in connection with the creation of an allegedly false hazardous waste manifest, are pending.

Com. v. David Cosentino and Paul Kinzer:

A Worcester County Grand Jury returned indictments against Cosentino for illegally giving hazardous waste to an unlicensed person, failure to use a hazardous waste manifest while shipping hazardous waste, and disposing of hazardous waste in a manner which could endanger human health, safety or the environment. Defendant Kinzer was charged with transporting hazardous waste without a license and without a manifest, and disposing of hazardous waste in a manner which could endanger human health, safety or the environment. The indictments arise from the alleged dumping of ten 55-gallon drums of hazardous waste on two open lots in Gardner. These cases are pending.

Com v. Paul Goldman and Plycraft Corporation:

This former Lawrence furniture manufacturing company and its president were each found guilty on multiple counts charging storage of hazardous waste in a manner which could endanger human health, safety or welfare, or the environment, and in a manner inconsistent with Massachusetts hazardous waste management regulations. The charges stemmed from Department of Environmental Protection inspections at the Plycraft site during which drums of hazardous waste were observed near open flame heaters. Some drums were in poor condition, not stored in designated areas, not labeled, and without proper U.S. EPA identification numbers. Goldman was ordered to pay for a $4,300 full-page advertisement in a national furniture trade journal, advising other manufacturers of the criminal liability for hazardous waste violations, and encouraging them to comply with hazardous waste laws. Goldman was also fined $15,000, to be paid over a 2-1/2 year probationary period.

Com. V. Gordon Realty Corp. of Worcester:

This Worcester real estate development company pled guilty to the illegal transfer of hazardous waste to an unlicensed transporter, and was ordered to pay a $15,000 fine.

Com. V. Roger Knowles and Polymerine,Ltd.:

This New Bedford circuit board manufacturer and its president each pled guilty to indictments charging storage of hazardous waste in a manner which could endanger human health, safety, welfare, or the environment and in a manner inconsistent with Massachusetts hazardous waste regulations; and transferring hazardous waste to an unlicensed person. The charges stemmed from a sting operation in which Knowles paid undercover Strike Force agents, posing as an unlicensed waste disposal company named "Three Guys Disposal", to dispose of four drums containing hazardous waste. A subsequent surveillance of the plant revealed evidence of illegal hazardous waste storage. Polymerine was ordered to pay $400,000 in fines. Knowles was fined $10,000 and placed on two years probation.

Com. v. Krisco Corn. & Kris Ogonowsky:

A Middlesex County Grand Jury indicted this Somerville auto body shop and its vice president and manager for transferring hazardous waste to an unlicensed person, transfer of hazardous waste without a manifest, and attempted illegal transfer of hazardous waste. The charges stemmed from the alleged dumping of partially-full cans of solvent-based paints into a trash dumpster which was designed to receive only non-hazardous rubbish and garbage. These cases are pending.

Com. v. Albert D. Parker:

On application by the Strike Force, the Peabody District Court issued a complaint charging this defendant with illegal storage of a special waste (asbestos). The complaint arose from the alleged abandonment of about 725 bags of asbestos waste at a self-storage facility in Lynnfield. This case is pending.

Com. V. Bernard Pemstein & Darryl Saad:

Pemstein, a Worcester commercial property owner, pled guilty to three counts of violating state air pollution laws and one count of attempting to illegally dispose of asbestos waste. Defendant Saad, an Oxford contractor retained by Pemstein, pled guilty to five counts of violating state labor and industry regulations designed to protect worker safety at an asbestos removal site. The charges arose from an illegal asbestos removal operation conducted at a Worcester property owned by Pemstein. Pemstein was fined $30,000 and placed on 90 days probation. Saad was fined $1,000 and also placed on 90 days probation.

Com. V. Carl Trant:

Acting on the Commonwealth's motion, the Hampden Superior Court vacated its stay of its previously imposed jail sentence for this defendant convicted on multiple indictments charging solid waste, air pollution, and hazardous materials violations in connection with the maintenance of a Brimfield tire dump. The Court acted after a series of hearings during which the Commonwealth established that, contrary to the terms of the stay, the defendant had failed to implement measures which would eliminate tire fire concerns at the site. For violating the Massachusetts solid waste management statute, the defendant was sentenced to two years in the House of Correction, 18 months to serve, the balance suspended for two years. For violating the air pollution control act, the defendant was sentenced to one year in the House of Correction, to be served concurrently with the solid waste sentence; for violating the oil and Hazardous Material Release Prevention Act, the defendant was sentenced to two years on and after the solid waste sentence, suspended for two years.

III. NON-CRIMINAL DISPOSITIONS

In addition to the criminal matters handled by the Environmental Strike Force, several matters were resolved through creative civil settlements negotiated as a result of resources devoted by the Strike Force's criminal prosecutors.

Com. v. AT&T:

A civil complaint was filed alleging violations of the state's Clean Water Act and the Oil and Hazardous Material Release Prevention and Response Act. The violations related to AT&T's alleged discharge of water, contaminated with hexavalent chromium, into the Merrimack River from its plant in North Andover. The release occurred when there was an accidental break in the plant's fire sprinkler system. AT&T agreed to pay a $75,000 penalty, to conduct regular training programs for employees who respond to spills at the plant, and to designate individuals who will be responsible for reporting such spills to the Department of Environmental Protection. AT&T also voluntarily implemented changes at the plant, at a cost of over

$900,000, which eliminated hexavalent chromium from the sprinkler system.

Com. V. Bertram Paley:

In a civil action against this Lawrence real estate developer and commercial landlord, the defendant agreed to pay $139,786 in civil and administrative penalties in connection with alleged illegal handling of asbestos. The defendant also agreed to remove damaged asbestos from his commercial complex, file and asbestos operations and maintenance plan with the state, report on employee training, and post warning signs during construction and renovation activities.

Com. V. Winfield Brooks:

A civil action was filed alleging violations of the Clean Waters Act by this Woburn chemical manufacturer. The violations related to the alleged discharges to the sewer of wastewater containing pollutants in excess of MWRA permit limits. The defendant agreed to pay $75,000 in penalties, to cease discharging industrial wastewater to the public sewer system, and to appoint a vice president to the position of environmental compliance officer to oversee compliance with environmental requirements.

IV. WORKING FOR SYSTEMIC IMPROVEMENTS

Recognizing the systemic issues highlighted by the above cases, the Attorney General continued to propose legislative changes which would improve the Commonwealth's capacity to respond to environmental problems. One such bill, "An act relative to the abatement of scrap tire stockpiles and the proper management of scrap tire generation," addresses the Commonwealth's immediate scrap tire stockpile problem by promoting abatement projects. The bill would also prevent future environmental threats by stimulating private tire recycling efforts. In recognition of the personal health threats posed to workers and other individuals by company practices which may result in injurious exposures to hazardous materials, the Attorney General filed legislation to increase fines against organizations found guilty of manslaughter or assault and battery.

In addition, the Attorney General co-sponsored the re-filed "Conscientious Employee Protection Act". A portion of the Act protecting public employees, became law during the past year. The Attorney General seeks to have similar protections extended to those who work in the private sector and who cooperate with law enforcement in the investigation of job-related legal violation, including environmental violations. The Attorney General also co-sponsored the re-filed Environmental Trust Fund and Forfeiture Act, Environmental Endangerment Act and a bill to strengthen and harmonize existing environmental enforcement provisions.

CRIMINAL INVESTIGATIONS DIVISION

The Criminal Investigations Division continues to provide the Criminal Bureau with an experienced group of investigators to carry on Criminal Bureau investigations. The police and civilian investigators assigned to this division provide a wealth of expertise and experience in matters such as organized crime, narcotics trafficking, public corruption, money laundering, securities violations, tax fraud, crimes against the elderly, and environmental crime.

The State Police Unit assigned to the Criminal Bureau is commanded by Lieutenant John Kelly, Sergeants Andrew Palombo and Thomas Quigley (Narcotics and Special Investigations Unit), Sergeant Robert Friend (Public Integrity/Economic Crime), and Sergeant Brian Kennedy (Springfield Office). Lieutenant Gail Larson of the Environmental Police supervises environmental investigations. Eight civilian investigators continue to provide expertise in financial investigations.

The hallmark of the division continues to be the assistance given to other agencies and municipalities, and joint investigations carried on with many federal, state, and local law enforcement agencies and police departments. Significant among these investigations are the following:

The Public Corruption Unit responded to complaints made by members of the Mansfield Police Department regarding misappropriation of town funds by the police chief. A lengthy investigation led to the indictment of the chief and his subsequent removal from the department.

The Organized Crime and Narcotics Unit developed information that a Webster police officer was trafficking in narcotics in Western Massachusetts. Undercover investigators working with investigators from the Worcester County District Attorney's Office were able to purchase narcotics from the police officer and subsequently arrest him for trafficking.

The Special Investigations Unit continued to coordinate many multi-jurisdictional investigations with various municipalities that do not have the resources or expertise to manage complex criminal investigations.

During FY 94, the Criminal Investigations Division accomplished the following:

Investigations	160
Arrests	157
Search Warrants	66
Stolen Property Seized	$500,000
Background Investigations	210
Assists to Other Agencies	350
Drug Money Seized	$100,931
Vehicles Seized	31
Firearms Seized	22
Heroin	218 ounces
Cocaine	32.9 lbs.
marijuana	68 lbs.
Pharmaceuticals	over 15,000 pills

PUBLIC INTEGRITY DIVISION

In 1994, the Public Integrity Division commenced over thirty criminal prosecutions against those individuals and corporations who violated the public trust. During the same time period, over thirty criminal prosecutions were resolved.

The Division initiated several prosecutions of incidents of corruption within the field of law enforcement. The Chief of Mansfield's Police Department was successfully prosecuted on larceny, perjury, false claims and related charges. At trial, the Division's prosecutor proved that the Chief committed several offenses, such as making false statements on handgun permits and embezzling drug forfeiture funds. The Chief was convicted after trial, and his co-conspirator pled guilty.

The Division also brought criminal charges against a Duxbury Police Officer, a Department of Public Safety fraud investigator and two Department of Probation officers. The charges alleged that the Duxbury police officer abused his position in an effort to obtain a real estate easement for his personal benefit from an elderly Duxbury resident.

A Department of Public Safety fraud investigator was brought up on attempted extortion and larceny charges for soliciting and accepting money from welfare recipients. Furthermore, two Springfield District Court probation officers were recently charged with bribery for soliciting money from a probationer that they supervised.

In addition to the above charges, the Division recently commenced criminal charges against a Boston police detective and another police department employee accused of obstruction of justice in fraudulently attempting to obtain a dismissal of criminal charges against one of their friends.

This past year, the Division also commenced several criminal prosecutions against public employees for larcenous schemes committed upon the Commonwealth. Five former employees of the Massachusetts Highway Department were convicted of larceny for their role in a no-show job scheme at the Highway Department's radio room. Two former employees of the Department of Public Health were charged with larceny for their role in filing false time sheets with that agency. Furthermore, a maintenance supervisor at the Chelsea Soldier's Home was charged with bribery for soliciting and accepting kickbacks from employees he supervised. In exchange for the bribes, the supervisor allegedly approved falsely inflated time sheets on behalf of the employees he supervised.

The Division also continued to investigate and prosecute businesses for procurement fraud committed upon the Commonwealth. Two individuals were recently indicted for larceny and procurement fraud charges pertaining to a non-profit corporation that held a state contract. The indictments alleged that the defendants diverted state funds that were targeted for the operation of a homeless shelter. These funds were eventually spent on personal items by the defendants.

Another business, including two of its owners, was prosecuted for fraud in the minority business enterprise program. Another corporation was prosecuted for submitting falsely inflated claims to the Metropolitan District Commission.

The Division also brought criminal charges against individuals that used their public office to take advantage of individual citizens. A social worker for the Brockton Multi-Service Center was indicted on larceny charges for allegedly extorting money from a client that the social worker counseled. Furthermore, as stated above, a Duxbury Police Officer was indicted for allegedly defrauding an elderly resident of a real estate easement.

The Division continued to coordinate the Public Integrity Advisory Group, which brought together representatives of a wide variety of officials from the various executive branches, independent authorities, state agencies and watchdog groups to advise the Attorney General on law enforcement strategy relating to ethics and government.

The task force members successfully referred a number of cases to the Division to advise the Attorney General on law enforcement strategies relating to ethics and government, and were able to combine their resources to effectively investigate and prosecute cases. An example of such referrals are two municipal housing directors that were charged with larceny pertaining to allegations of embezzlement at their respective agencies. Both cases were referred by the State Auditor's Office, which assisted in the investigation.

This past year, the Advisory Group's subcommittee focused upon various methods to ensure integrity and ethical conduct in the numerous public offices within the Commonwealth. The Advisory Group established a Public Integrity Awareness Program, designed to increase awareness of the ethical obligations of public employees and to ensure compliance with the laws governing public employees. One component of the program involves efforts to raise ethical awareness among state agencies of issues involving public employee's ethical responsibilities. Last March, the Advisory Group, in conjunction with the Governor's Office of Legal Counsel, sponsored an ethics briefing for agency counsel. This briefing, while focused on common issues involving fraud and corruption among public employees, was intended to familiarize agency counsel with the legal obligation of public employees and the prosecution of ethics violators.

The Advisory Group also has developed a brochure for state employees summarizing their ethical responsibilities under state law. This measure is aimed at ensuring that public employees are familiar with their ethical obligations under the law and at providing them with direction regarding where to turn with questions about their ethical obligations. The brochure will be distributed with paychecks in the fall of 1994. Finally, beginning in 1985 new state employees will be provided with, and required to acknowledge receipt of copies of the conflict of interest and campaign finance laws.

A review of the cases prosecuted by this Division reveals that it was successful in bringing cases at all levels of government in virtually every corner of the state.

CASES CHARGED BY PUBLIC INTEGRITY DIVISION

Date Indicted

7/93 Commonwealth v. Marsh
2 counts procurement fraud;
2 counts false claims;
2 counts corrupt gifts;

7/93 Commonwealth v. Halligan
1 count procurement fraud;
1 count false claims;
I count corrupt gifts;

7/93 Commonwealth v. Burke
1 count procurement fraud;
1 count false claims;
1 count corrupt gifts;

7/93 Commonwealth v. Westerbeake, Inc.
1 count procurement fraud;
I count false claims

7/93 Commonwealth v. B
2 counts procurement fraud;
2 counts false claims;
7 counts larceny

9/93 Commonwealth v. Katch
(U.Mass Professor)
1 count conflict of interest

10/93 Commonwealth v. Rogers
(DPW Employee)
I count larceny over $250

10/93 Commonwealth v. Soo Hoo
(DPW Employee)
1 count larceny over $250

11/93 Commonwealth v. Boizigian
(Essex County Sheriff's Office)
3 counts larceny over $250

11/93 Commonwealth v. Group Benefit Strategies, Inc.
(City of Springfield Contract)
10 counts larceny over $250
10 counts false claims

11/93 Commonwealth v. Tinsley
(City of Springfield Contract)
10 counts larceny over $250
10 counts false claims
1 count payment of illegal gratuity
1 count attempted larceny
I count conspiracy to commit larceny

11/93 Commonwealth v. Dougherty
(City of Springfield Contract)
9 counts larceny over $250
9 counts false claims
1 count payment of illegal gratuity
1 count conspiracy to commit larceny

11/93 Commonwealth v. Sharry
(City of Springfield Contract)
3 counts larceny over $250

11/93 Commonwealth v. Moore
(Department of Public Safety Employee)
2 counts willful subscription of
false tax return
I count willful attempt to
evade and defeat income tax

1/94 Commonwealth v. Diterlizzi
Department of Public Safety Employee)
8 counts larceny over $250
8 counts attempted extortion

1/94 Commonwealth v. Walsh
(State Police Officer)
Operating to endanger

1/94 Commonwealth v. Calnen
(Suffolk County Grand Juror)
2 counts larceny over $250
1 count perjury

3/94 Commonwealth v. Peterson
(Oxford Housing Authority)
1 counts larceny over $250
4 counts forgery
4 counts uttering
1 count filing false claims

3/94 Commonwealth v. Wilkins
(Department of Public Health)
2 counts larceny over $250
2 counts procurement fraud
2 counts false claims

3/94 Commonwealth v. Goveia
(Department of Public Health)
2 counts larceny over $250
2 counts procurement fraud
2 counts false claims

3/94 Commonwealth v. Borden
(Chelsea Soldier's Home)
I count bribery

3/94 Commonwealth v. Stanley
(Registry of Motor Vehicles employee)
I count bribery
1 count falsifying driver's license
1 count false written report

3/94 Commonwealth v. Lopes
(Brockton Multi-Service Center Social Worker)
2 counts larceny over $250
1 count attempted extortion

4/94 Commonwealth v. deRusha
(Flynn Campaign Committee)
I count income tax evasion

4/94 Commonwealth v. Hardy
(Lancaster Housing Authority)
3 counts larceny over $250
6 counts uttering a forged instrument
12 counts presentation of false claims

5/94 Commonwealth v. Dormandy
(Duxbury Police Department)
1 count larceny over $250

6/94 Commonwealth v. Sheehan
(Holbrook Police Department)
I count larceny
1 count conspiracy

6/94 Commonwealth v. Furlani
I count larceny
I count conspiracy

7/94 Commonwealth v. Hiiziins, Jr.
(Boston Police Department)
1 count interference with witness
I count conspiracy to interfere with a witness
1 count attempt to obstruct justice
1 count conspiracy to obstruct justice

7/94 Commonwealth v. Marshall
1 count interference with witness
1 count conspiracy to interfere with a witness
1 count attempt to obstruct justice
1 count conspiracy to obstruct justice

7/94 Commonwealth v. Swirbalus
(Boston Police Department)
1 count interference with witness
1 count conspiracy to interfere with a witness
2 counts attempt to obstruct justice
1 count conspiracy to obstruct justice

8/94 Commonwealth v. Jorge
(Department of Probation)
1 count soliciting bribe (c. 268A, 2)
1 count soliciting bribe (c. 268A, 3)
1 count conspiracy
1 count larceny over $250

8/94 Commonwealth v. O'Brien
(Department of Probation)
1 count soliciting bribe (c. 268A, 2)
1 count soliciting bribe (c. 268A, 3)
1 count conspiracy
1 count larceny over $250

8/94 Commonwealth v. Cleckley
(Bostonian Chambers employee)
4 counts larceny over $250
14 counts false claims
14 counts procurement fraud
14 counts false written statements

8/94 Commonwealth v. Schand
(Bostonian Chambers employee)
12 counts false claims
12 counts procurement fraud

CRIMINAL CASES PENDING

Date Indicted

9/92 Commonwealth v. Bunk
(former Conservation Commissioner - Taunton)
4 counts conflict of interest

12/92 Commonwealth v. Smith
(Yarmouth Water Department)
34 counts larceny
2 counts procurement fraud
2 counts conflict of interest

3/93 Commonwealth v. Sheehan
(Holbrook Police Department)
Bribery, Receiving Stolen Property, Conspiracy

4/93 Commonwealth v. Procopio
(Rehoboth clerk)
2 counts larceny
2 counts false written report and embezzlement

7/93 Commonwealth v. Marsh
2 counts procurement fraud;
2 counts false claims;
2 counts corrupt gifts;

DISPOSITIONS FISCAL YEAR 1994

Commonwealth v. Matchett
2 1/2 to 3 years MCI.

Commonwealth v. Lynch/Enterprise Equipment:

Lynch - nolo plea, 3-5 years, suspended for 4 years. 100 hours of alternative punishment. $10,000 fine and $11,850 restitution.
Invernizzi - nolo plea, 6 months probation, $5,000 fine and $5,000 restitution.

Enterprise Equipment Corp. nolo plea, $10,000 fine.

Commonwealth v. Hurley
2 years HOC,
3 months to serve,
$23,000 restitution.

Commonwealth v. Ellis
1 year HOC, suspended,
2 years probation

Commonwealth v. Foley
3 - 5 years MCI suspended

Commonwealth v. Neary
3-5 years MCI, suspended,
$17,472.08 restitution

Commonwealth v. Barnstead
2 years HOC, suspended,
$4,375.29 restitution

Commonwealth v. Benevento
3 - 5 years MCI suspended for 3 years
$13,556.00 restitution.

Commonwealth v. Berizin
3-5 years, suspended.
$4500 restitution.

Commonwealth v. Sinksen
4-5 years MCI suspended,
$300 restitution.

Commonwealth v. Lombard
2 years HOC, suspended,
$6200 restitution.

Commonwealth v. Earls
3-5 years MCI, suspended;
$4,621.95 restitution.

Commonwealth v. D'Urso
$3,939.00 restitution,
Pre-trial probation for 2 years.

Commonwealth v. Barrows, Jr.
2 1/2 years HOC , I year to serve,
balance suspended for 4 years.

Commonwealth v. Elizabeth Quirk
2 years probation,
$24,500 restitution.

Commonwealth v. Hamwey
1 year pre-trial probation $15,000 costs

Commonwealth v. C.J Mabard Inc.
1 year pre-trial probation $15,000 costs

Commonwealth v. Katch
2 years probation,
500 hours community service,
$3,000 fine.

Commonwealth v. Walsh
3 months HOC, suspended,
$200 fine.

Commonwealth v. Paul Ouirk
Not guilty after trial.

Commonwealth v. Cater
Probation for one year,
restitution of $1,360.

Commonwealth v. Doherty
2 1/2 years in H.O.C., suspended,
200 hours community service.

Commonwealth v. Brown
4 - 5 years MCI.

Commonwealth v. Katsirubas
2 years HOC, 3 months committed,
$12,000 fine.

Commonwealth v. Smart
Not guilty after trial.

Commonwealth v. Hardy
1 year HOC suspended for two years,
250 hours community service,
$5,144.00 restitution.

Commonwealth v. Cronin
2 years HOC, 9 months to serve,
$41,768.00 restitution.

Commonwealth v O'Brien
Dismissed

Commonwealth v. Donohue
Dismissed

ECONOMIC CRIMES DIVISION

In Fiscal Year 1994 the Economic Crimes Division continued to handle a heavy caseload involving all types of financial crimes. The division concentrates on cases involving insurance fraud, tax crimes and "white collar crimes". Many cases involve fraud against elderly citizens and financial institutions. Often, defendants are professionals who abuse the trust placed in them by clients and employers. Because such cases tend to be complex, investigations often require the review of extensive documents and records. Therefore, in addition to nine attorneys, the division also includes financial investigators and police officers. The Division receives referrals from private parties, law firms, state agencies, private agencies, financial institutions and a variety of federal agencies.

The Division was busy and productive in Fiscal Year 1994. The Division conducted a significant number of investigations, often resulting in referrals to other prosecution agencies, or other bureaus in the office. In addition, approximately 85 new cases were charged in various courts of the Commonwealth and over 40 cases were successfully prosecuted to final depositions. Cases handled by the Economic Crimes Division, including its Insurance Fraud Unit and Tax Prosecution Unit are discussed below.

INSURANCE FRAUD UNIT

The Insurance Fraud Unit continued its work of investigating and prosecuting all types of workers compensation fraud, motor vehicle insurance fraud, homeowners insurance fraud, life insurance fraud and fraud by "insiders", including agents, adjusters and insurance company employees. Investigations and prosecutions were handled by three full-time insurance fraud prosecutors as well as many other AAGs throughout this division and other divisions of the criminal bureau.

The Insurance Fraud Unit initiated approximately 35 new cases in Fiscal Year 1994 in district and superior courts throughout the Commonwealth. Some highlights from the new cases include:

- In July, 1993 a defendant was indicted in Suffolk Superior Court on a charge of perjury after he gave false testimony at a hearing before the Department of Industrial Accidents. An investigation revealed that the defendant attempted to conceal the fact that he had filed a previous claim under a different name, facts which he denied during a hearing before the DIA.

- In September, 1993 an individual was arrested and charged in Boston Municipal Court with filing a fraudulent insurance claim and attempted larceny after he submitted a phony death certificate and attempted to collect a $135,000 life insurance policy on his wife. The defendant's wife had been deported following another criminal matter, and when she was overseas

the defendant submitted the false insurance claim. An extensive investigation was conducted involving private investigators in Nigeria and the assistance of the Insurance Fraud Bureau of Massachusetts. As a result, this defendant subsequently was indicted in Suffolk Superior Court. This case proceeded to a jury trial in Suffolk Superior Court in June of 1994 following which the defendant was convicted and sentenced to 2 1/2 - 5 years in MCI-Cedar Junction. His insurance claim was denied and it is expected that he will be deported following completion of his sentence.

- In October 1993, a chiropractor with an office in Melrose was indicted in Middlesex Superior Court on 58 separate indictments charging larceny, attempted larceny, insurance fraud and conspiracy. The charges were the result of a two- year investigation which revealed that the defendant provided treatment and medical reports to a number of patients who were allegedly using false names, who had been treated for identical injuries previously, or who were involved in fictitious accidents.

- In March 1994, a former insurance agent was indicted in Plymouth Superior Court on multiple counts of forgery and larceny after an investigation revealed that she had defrauded a premium financing company by submitting fraudulent insurance applications including financing agreements. The defendant applied for financing without the knowledge of the policyholder and converted the premium financing for her own purposes. An extensive investigation by the Insurance Fraud Bureau located all of the documents submitted by the defendant as well as a series of other documents containing original handwriting and signatures of the defendant. The handwriting was submitted to an expert who was able to verify that the handwriting on the false insurance applications and finance applications was the handwriting of the defendant.

- In April 1994, charges were obtained in three separate district courts against three individuals involved in a series of fraudulent insurance claims. Charges were obtained in Peabody District Court, Boston Municipal Court and Lowell District Court against all three individuals. The investigation in this case by the Massachusetts Insurance Fraud Bureau revealed that the defendant staged motor vehicle accidents or deliberate collisions and then filed property damage claims and bodily injury claims.

- In April 1994, an investigation by the Massachusetts Insurance Fraud Bureau and State Police in both Massachusetts and Rhode Island uncovered an attempt by three individuals to conceal a motor vehicle so that its owner could file a theft claim with his insurer. A sting operation was conducted and three defendants were caught in the act of concealing the motor vehicle and then delivering it to a "buyer" who turned out to

be an undercover state trooper. The defendants were charged with concealing a motor vehicle to defraud an insurer, attempted larceny and defacing vehicle identification numbers. Because of the cooperation and quick intervention by the Insurance Fraud Bureau and the Massachusetts State Police and Rhode Island State Police, the claim was not honored. The defendants were found guilty, placed on probation, ordered to pay fines and ordered to perform extensive community service.

- In April 1994, three defendants were indicted in Plymouth Superior Court after they conspired to submit a fraudulent personal injury claim under a homeowners policy. One of the defendants injured himself following a party at a bar in Rhode Island. Subsequently, two of the defendants agreed to submit a claim that the defendant had injured himself at his friend's house. The friend filed a claim on his homeowners insurance policy seeking to recover for the injury. The third defendant, the wife of one defendant, assisted the scheme by submitting false statements in aid of the scheme.

- In June 1994, a defendant was indicted in Middlesex Superior Court on charges of workers compensation insurance fraud, filing a fraudulent insurance claim and larceny. Following an alleged workplace injury, the defendant received total disability benefits from his employer. While collecting those benefits he worked three separate full-time jobs for three separate employers and collected over $35,000 in total disability benefits.

In FY 94 the Unit continued to recommend periods of incarceration where appropriate, as the primary method to deter insurance fraud crimes. At the same time, fines and restitution were requested to make sure that any financial gain obtained by a defendant is returned to the insurance companies so that ratepayers are not burdened by the effects of fraud. Some of the cases which were prosecuted to a final disposition in FY 94 include:

- In September 1993, a defendant was convicted in the Boston Municipal Court Jury of six session on charges that he received a stolen motor vehicle and that he altered the vehicle identification numbers. The vehicle in question, a recreational vehicle, had been reported stolen earlier by another individual. An insurance company investigator located the recreational vehicle in the possession of this defendant. The defendant was convicted after a trial, given a suspended sentence and ordered to pay restitution in the amount of $13,721.

- In October 1993, a defendant was convicted in Middlesex Superior Court on two counts of motor vehicle insurance fraud and two counts of larceny. This defendant was one of the individuals identified during an investigation into a series of

fictitious accident claims in the Cambridge-Somerville area. The defendant was sentenced to two years in the House of correction with one year to serve and was ordered to pay $2,000 in restitution to his insurer.

- In March 1994, a defendant was convicted in Norfolk Superior Court as a result of an investigation conducted by the Massachusetts Insurance Fraud Bureau and referred to the Attorney General's Office. The defendant was also indicted in Suffolk Superior Court as a result of this investigation. The defendant, an insurance agent, was charged with ten indictments for larceny over $250 in connection with a scheme by which he sold bogus insurance polices to customers and kept the premiums. The defendant was found guilty and was given a sentence of 7-10 years at MCI-Cedar Junction with two and one half years to serve and the balance suspended for five years with probation. The defendant was ordered to surrender his insurance agent license and not to apply for a new license and was further ordered to pay $5,000 in restitution to various victims of this scheme.

At the same time these cases were charged or prosecuted to completion, significant training programs were prepared and presented to insurance company representatives, police officers, attorneys and other individuals throughout the Commonwealth. The volume of cases and investigations handled, as well as the successful prosecutions, are the result of the hard work of the Insurance Fraud Unit, investigators from the Massachusetts Insurance Fraud Bureau, and adjusters and special investigators from insurance companies, all of whom are dedicated to deterring insurance fraud by aggressively investigating and prosecuting such cases.

TAX PROSECUTION UNIT

In FY 94 the Tax Prosecution Unit prosecuted a significant number of cases and conducted several long-term investigations of suspected tax crimes. Although each AAG in the Economic Crimes Division handles a caseload including tax cases, one AAG concentrates full time on this subject area. Many cases were referred to the office of the Attorney General by the Criminal Investigations Bureau of the Massachusetts Department of Revenue and investigators from that agency actively assisted the Tax Prosecution Unit in investigations and prosecutions in FY 94. Two jury trials were recently concluded in Suffolk Superior Court. The analysis, documentation and witnesses provided by the Department of Revenue were invaluable in the successful prosecution of these cases. A separate long-term investigation conducted by the Tax Prosecution Unit, DOR investigators and members of the Criminal Bureau Public Integrity Division resulted in charges against numerous individuals. In addition, other cases were developed by the Tax Prosecution Unit as a result of referrals from other agencies. During FY 94, twenty-five new cases were charged in Superior Court and seven pending cases were

successfully prosecuted to completion. Selected highlights of prosecutions conducted by the Tax Prosecution Unit in FY 94 include:

- In August 1993, an individual was indicted in Suffolk Superior Court on a charge of filing a false tax return following an investigation conducted by the Tax Prosecution unit and investigators from the Criminal Investigations Bureau of the Massachusetts Department of Revenue. That investigation revealed that the defendant derived significant income from an insurance oversight company he operated, which income he failed to report an his tax returns. Additional aspects of that investigation were conducted in connection with the Public Integrity Division which resulted in charges against the defendant's company which defrauded the City of Springfield by submitting false and exaggerated claims in connection with an insurance cost control arrangement between that company and Springfield.

- In August 1993, Department of Revenue investigators uncovered a scheme involving the filing of fraudulent state income tax returns and immediately referred that matter to the Tax Prosecution Unit. As a result of the subsequent investigation, an individual was arrested and charged in Boston Municipal Court with larceny over $250 and charges of filing false tax returns. Further investigation conducted in conjunction with Department of Revenue investigators revealed that the arrested individual was working with an inmate at a state prison who was responsible for filing a number of false individual income tax returns. Investigation and research by the Department of Revenue allowed this office to obtain indictments against two individuals in Suffolk Superior Court on multiple charges of larceny, conspiracy and filing false tax returns. One defendant cooperated with the Commonwealth, plead guilty and was incarcerated for his role in the scheme. Charges are still pending against the second defendant, who remains incarcerated on other matters.

- In February 1994, a Rochester businessman plead guilty in Suffolk Superior Court to criminal tax charges involving tax evasion, failure to account for meals taxes and failure to file corporate tax returns. The defendant failed to pay the Commonwealth approximately $240,000 in meals taxes he collected at a number of donut and coffee shops he operated. The defendant was ordered to serve two years in the House of Correction, placed on probation and ordered to perform one thousand hours of community service following his release from jail.

- A South Dartmouth businessman who operated a company specializing in pre-fabricated homes was indicted on eight counts of failure to account for and pay over withholding taxes. The investigation in this case revealed that the

defendant withheld taxes on approximately 1.3 million dollars in salaries paid to his employees but failed to account for and pay over such taxes to the Commonwealth. The unpaid tax liability in this case amounted to approximately $65,000.

- A firefighter from Milton was indicted in Suffolk Superior Court on charges of failure to pay over sales taxes and failure to pay withholding taxes. The defendant operated a local bicycle sales and repair shop in addition to his job as a firefighters He failed to pay over approximately $40,000 in sales and withholding taxes on approximately $750,000 of sales and wages from his bicycle business.

- A husband and wife were indicted in Suffolk Superior Court on multiple counts of sales tax evasion and failure to account for and pay over sales taxes. The defendants owned and operated 14 taxicabs through seven different corporations they controlled. Tax returns filed by the couple failed to account for over $750,000 in taxicab rental fees on which the couple owed approximately $38,000 in sales taxes.

- A South Hadley businessman and a corporation he owned were each indicted on one count of meals tax evasion, one count of failure to account for meals taxes and four counts of failure to file corporate excise tax returns. The investigation conducted by the Criminal investigations Bureau of the Department of Revenue determined that the individual defendant owned a bar in Holyoke. The defendant and his corporation failed to pay approximately $35,000 in meals and excise taxes by failing to report sales to the Department of Revenue or falsely reporting the amount of such sales.

- A local businessman was indicted in Suffolk Superior Court on charges that he filed false personal income tax returns in an attempt to conceal his earnings from a company he controlled. After further investigation the corporation was also indicted on a series of tax charges. The cases resulted from an investigation into a check cashing service located in Brockton. The defendant cashed account receivable checks payable to the corporation at the check cashing service so that those receipts would not appear on the company's ledgers. The accountants who prepared tax returns for the corporation was not informed of the additional income and the corporate tax returns therefore were not correct. The individual defendant cashed the checks and used the receipts for his own purposes without declaring the amounts received on either the corporate or his individual tax returns.

ECONOMIC CRIMES UNIT

The Economic Crimes Unit worked on a wide variety of cases and complex investigations. Complaints were referred to the Unit by state agencies, attorneys, private citizens, federal agencies (e.g., the FDIC, Secret Service, FBI, Postal Inspector, etc.), the Board of Bar Overseers and state and local police officers. The Unit also prosecuted a number of cases which were referred to this office due to a conflict on the part of local district attorneys. Over 25 separate new cases were initiated by the Economic Crimes Unit in FY 94 including:

- A former attorney, the former head of a large trusts and estate department of a major Boston law firm, was indicted in Suffolk Superior Court on charges of embezzlement, larceny and forgery. The investigation which resulted in the indictments revealed that the defendant embezzled approximately $350,000 from a number of elderly clients. While the investigation was ongoing, the defendant attempted to gain control of an estate valued at approximately $500,000 by forging a will and other documents which purported to give the estate to the defendant. This matter was prosecuted by the Economic Crimes Unit after a referral from the Board of Bar overseers.

- In August 1993, a woman was indicted in Worcester county on charges of practicing medicine without a license and larceny over $250. Indictments were also obtained in Norfolk and Middlesex Counties. Investigation in this case revealed that the woman posed as a licensed physician when in fact she had no significant medical training. She administered physical examinations to bus drivers for a number of companies in the Commonwealth and billed for her services, representing that she was a physician. In addition, she billed the companies for urine and blood testing even though she routinely disposed of the samples without submitting them for laboratory testing.

- An attorney and an accountant who assisted him were indicted in Barnstable Superior Court on multiple counts of embezzlement. The defendant attorney conducted real estate closings on behalf of a title insurance company. However, instead of turning over the proceedings of the closing to the appropriate party, the defendant diverted the money to pay for office and personal expenses. He then used money from subsequently closings to pay off amounts due on earlier closings which were overdue. The investigation revealed that the defendant could not account for funds from seventeen separate real estate closings he had conducted. A second defendant, an accountant, worked with the attorney and facilitated this scheme to embezzle money. The amount of money embezzled by the defendants was well in excess of one million dollars.

- A former chief financial officer of a local manufacturing and distribution company was indicted in Middlesex Superior Court on multiple counts of larceny by embezzlement after an investigation revealed that he had embezzled approximately $800,000 from his employer. The defendant used company funds to pay for his personal expenses and to pay for expenses of a private consulting business which the defendant operated. A physician who was a noted researcher as well as chief of cardiology at a local hospital was indicted in Suffolk Superior Court on six counts of larceny after an investigation revealed that he had used his position of authority to embezzle approximately $130,000. An individual was indicted in Suffolk Superior Court after an investigation revealed that she stole approximately $23,000 from a non-profit Boston organization which provided treatment and counseling for AIDS victims and treatment for substance abuse problems. The defendant used her position of trust to obtain control of organization credit cards and to have checks improperly issued to herself. The defendant used four different schemes to conceal her larcenies from the organization and made false entries in corporate ledgers and books to cover up her thefts. The defendant was charged with multiple counts of larceny, forgery and making false entries in corporate books.

- A defendant, a disbarred attorney, was indicted in Worcester Superior Court on charges that he embezzled approximately $397,000 from a title insurance company while acting as a closing attorney. The defendant issued false title insurance policies which concealed the fact that he had not paid the mortgages on the properties.

In FY 94 the Economic Crimes Unit conducted a significant number of criminal investigations in addition to the matters highlighted above. At the same time, the Unit was able to successfully complete prosecution of a number of pending criminal cases. Of the prosecutions completed in FY 94, some of the dispositions of note are:

- A former Suffolk County jail officer was convicted after a jury trial in Suffolk Superior Court on a charge of assault and battery by means of a dangerous weapon. The defendant at the time of the incident in question was a Lieutenant in charge of most of the prisoners in the old Charles Street Jail. After an argument between an inmate and a jail officer the defendant assaulted punched and kicked the inmate while the inmate was being restrained by other officers. Following an investigation by the Sheriff's Department the defendant was suspended and prevented from working at the jail. The inmate recovered from his injuries. The defendant received a suspended sentence with probation supervision.

- A manager of a local bank was convicted in Norfolk Superior Court on thirty two indictments charging her with stealing from 16 separate customer accounts and with making false entries in bank records. The investigation revealed that the defendant embezzled in excess of $100,000 by using her position of authority to withdraw amounts from customer accounts. Many of the victims of her embezzlement were elderly account holders who were not aware that the sums were being withdrawn. The Commonwealth requested the court to incarcerate the defendant because of the violation of trust placed in her and because the victims of her scheme were elderly account holders. The court, instead, ordered the defendant to serve a period of home confinement.

- A defendant was convicted in Suffolk Superior Court on counts of larceny, forgery and uttering after an investigation revealed that he was issuing bogus insurance bonds. The defendant previously had been prosecuted for similar crimes and previously had been ordered not to engage in such activity again. Despite that earlier warning from the court, the defendant represented to numerous customers that he would secure insurance bonds for the customers. Upon his conviction on multiple counts of larceny, forgery and uttering as well as one count of acting as an insurance broker without a license, the defendant was adjudged to be a common and notorious thief and sentenced to MCI-Cedar Junction.

- A Gloucester-area attorney was convicted in Essex Superior Court on twelve indictments charging larceny, sixteen indictments charging forgery, fourteen indictments charging uttering a forged instrument, and two counts of embezzlement by a fiduciary. The defendant was an attorney who administered trusts and estates for a number of clients. He used that position of trust to steal from his clients, including many elderly clients whose estates he administered. The initial investigation revealed that the defendant had stolen approximately $600,000 from a number of elderly clients and he was indicted for those acts of embezzlement. While that case was pending in Essex Superior Court, further investigation revealed that the defendant stole approximately $900,000 from another estate. The defendant was caught in the act of attempting to wire money out of the country and he made statements that he intended to leave the area. The total amount embezzled by the defendant from his clients was approximately 1.5 million dollars. The defendant was ordered to serve a period of incarceration at MCI-Cedar Junction.

- A former attorney was convicted in Suffolk Superior Court on multiple counts of embezzlement by a fiduciary and larceny based on evidence that he embezzled client funds to invest in his own business ventures. One of the victims was a 99 year old widow whose estate the defendant administered. The

defendant used the victims' money to support the defendant's private real estate development. The total amount of money this defendant embezzled from his clients was in excess of one million dollars. After a jury trial in Suffolk superior Court the judge sentenced the defendant to serve two years in the House of Correction.

- A former attorney was convicted in Suffolk Superior Court on 22 counts of embezzlement, 22 counts of larceny, 1 count of attempted larceny and 3 counts of uttering a forged instrument. The defendant was ordered to serve two years in the House of Correction and had a suspended 5-7 year state prison sentence imposed on and after the period of incarceration.

FAIR LABOR AND BUSINESS PRACTICES DIVISION

I. CREATION OF THE FAIR LABOR AND BUSINESS PRACTICES DIVISION

A. Legislative Mandate:

On September 28, 1993, pursuant to Chapter 110 of the Acts of 1993, the Massachusetts State Legislature transferred most of the functions once performed by the Department of Labor and Industries (D.L.I.) to the Office of the Attorney General. The statutory responsibilities of the Attorney General's new Fair Labor and Business Practices Division includes the investigation and enforcement of laws pertaining to child labor, hours and working conditions, wages, fair competition for bidders on public construction jobs and workplace safety. To accomplish this, criminal complaints may be filed against alleged violators of these labor laws and appropriate statutory penalties sought. Or, if an investigation reveals that a contractor or subcontractor has failed to pay the prevailing wage on a public works job, the Attorney General may conduct a hearing and order work halted until the defaulting party has filed with the Attorney General's office a bond in the amount of a penal sum as determined by the Attorney General and conditioned upon payment of the prevailing wage rate.

Last, an employee may, at the expiration of ninety days after the filing of a complaint with the attorney general, or sooner if the Attorney General assents in writing, institute a civil action for injunctive relief and damages incurred. An employee who prevails may obtain treble damages for any loss of wages or other benefits and shall be entitled to litigation costs and reasonable attorneys fees.

B. Establishment of the Division

On October 4, 1994 the Office of the Attorney General began the process of absorbing the functions and personnel mandated by the transfer legislation. The first step involved the consolidation of the four regional offices that had been closed by the DLI due to lack of funding into the Boston and Springfield offices. The division then began the recall of attorneys, managers, inspectors and support staff who had been laid off by D.L.I. for the prior three months due to uncertainty over the Department's future.

Although in 1988 D.L.I. employed 188 individuals, the overwhelming majority of whom performed many of the same functions transferred to the Attorney General's office, only 34 positions were transferred to the Fair Labor Division.

The process of reviewing back complaints and the 300 pieces of mail received per day took the full-time effort of the majority of inspectors. In addition a phone system with ten lines was installed and manned by the staff. In the first three months of

operation, the intake unit of the Fair Labor Division received an average of 625 calls per day in the Boston office and approximately 200 calls per day in the Springfield office. Approximately 250 calls per day were from individuals requesting that complaint forms be mailed to them for completion and submission to the division. These complaints were and continue to be for a wide variety of labor and safety issues including nonpayment of wages, vacation, holiday pay and prevailing wages, personnel records access, unsafe working conditions, child labor exploitation and work related fatalities.

II. ENFORCEMENT BY THE FAIR LABOR DIVISION

Even amidst the confusion caused by the transfer, the division has been successful in managing the active case load inherited from D.L.I. As to the cases themselves, D.L.I. enforced the majority of wage violations through an administrative process with minimal criminal enforcement of the prevailing wage laws. The result has been an open and accepted practice within the state to ignore the prevailing wage laws on public works projects. The Fair Labor Division is attempting to reverse this trend by being aggressive and innovative in the enforcement area.

The division has employed traditional law enforcement tools, such as the execution of search warrants and use of the investigative grand jury, to develop evidence of flagrant criminal violations of the prevailing wage. In addition, on April 8, 1994, the division released an advisory on the public bid process and prevailing wage. The advisory was published in the Central Register and was mailed to every city and town in the Commonwealth as well as all construction companies registered with the Division of Planning and Capital Operations. The advisory details the responsibilities of an awarding authority with respect to the review and maintenance of certified weekly payroll records and highlights the necessity for oversight of a public construction project.

A. CHILD LABOR:

This aggressive enforcement extends to all aspects of the labor laws. As part of the Attorney General's effort to prevent the exploitation of children in the workplace, the Fair Labor and Business Practices Division conducted random child labor inspections at sites throughout the Commonwealth during the week of July 15, 1994. Ten inspectors investigated 361 employers in 50 communities. A wide array of employers were inspected, such as fast food eateries, restaurants, retail stores, gas stations, convenience stores and supermarkets, amongst others. In the week long sweep, 803 violations were recorded by inspectors from the division. The violations included failure to produce records to inspectors upon request, lack of a required educational certificate signed by the superintendent of schools or a designated agent, and lack of a required work permit and child working with heavy machinery that is prohibited by law. Employers with violations were given written citations along with

a warning that a follow up visit would be made to ensure future compliance. Those follow up visits, along with additional site inspections, were conducted the week of August 15 to August 19, 1994.

B. WORKPLACE SAFETY:

The workplace safety mandate transferred to the office of the Attorney General has presented the most vexing of challenges for the division, as at the time of the transfer there were no D.L.I. inspectors who were board certified in workplace safety. Many workplace safety issues had previously been deferred to OSHA. Nonetheless, the Attorney General's Office is committed to increasing the division's presence in the area of workplace safety. To exemplify, the division along with the Boston Fire Department (B.F.D.) has had a great deal of involvement with the construction of two tunnels at Deer Island. The involvement at Deer Island has included several safety visits for above ground construction and several visits inside the outfall tunnel which is expected to be nine and one half miles long with only one means of ingress and egress. Prior to it being filled with treated sewerage, it will be the largest single-entranced tunnel in the world. Because of the outfall tunnels unique length and potential elevated safety risks, the Boston Fire Department has been vigilant in reviewing all the safety aspects of the construction. The B.F.D. turned to this office to elicit support in responding to all inquiries of safety identified by the B.F.D.

III. EDUCATIONAL OUTREACH BY THE FAIR LABOR DIVISION

In addition to enforcement, the Attorney General's Office is committed to educating the public about the wage and labor laws. The Attorney General created an Advisory Board, comprised of representatives from labor unions, the construction industry, law firms, management and public interest groups, to provide advice and direction on labor issues. The Advisory Board, in turn, formed three subcommittees to oversee the formulation of substantive legal policies in the areas of nonpayment of wages, bid protests and health and safety issues.

A. ADVISORIES:

The following eight draft advisories have been promulgated by the division: Professional Exemptions, Hourly Rates for Piecework, Minimum Daily Hours, Wage Deductions, Vacation Policies, Meal Periods, Wages for Employee Training, and Independent Contractors. These advisories were the subject of a Boston Bar Association Brown Bag Lunch and await final input from the Attorney General's Advisory Committee.

B. CHILD LABOR BOOKLET:

A Child Labor Safety Booklet was created which details the child labor laws and the penalties for violations. This booklet was distributed to the 361 businesses that were subject to the child labor site inspections.

C. SPEAKING ENGAGEMENTS:

As part of the ongoing outreach efforts, Assistant Attorneys General and Inspectors assigned to the division have spoken to both business and labor groups in an effort to inform them about their obligations and rights under Mass. Law. Such speaking engagements included: City Solicitors and Town Counsel, A.B.A. Seminar, M.B.A. Seminar, Worcester Bar Association, Boston Bar Association Labor Committee, Institute of Management, Institute of Business Law, Interpay Organization, Associated General Contractors, Foundation for Fair Contracting/Board of Directors, Mass Association of Subcontractors, MA Association of Masons, Utility Contractors' Association of New England, Inc., Building and Trades Annual Meeting, Labor Guild/Boston College and a Labor Seminar in Holyoke and Waltham.

D. NOTIFICATION TO THE DISTRICT COURTS:

The Attorney General sent a letter to the district court clerks notifying them of the transfer and educating them on the office procedures with respect to labor-related complaints. Complainants are informed by the clerks that contact should be made with the Fair Labor Division prior to the filing of a complaint with the court. This avoided clerks from district courts calling to determine who was answering for the Commonwealth on cases scheduled for trial when a complaint had not been filed with or by the Attorney General's Office.

E. TRAINING SEMINARS:

One of the major criticisms of D.L.I. was the inconsistency of the answers given to the general public. In an attempt to alleviate varying and often contradictory answers, a manual was developed to create direct answers to the most commonly asked questions. The Fair Labor Division conducted three day-long seminars for members of its staff to ensure that everyone was properly trained on the correct answers to the questions most commonly posed.

F. LEGISLATIVE PACKAGE:

The Fair Labor Division has identified areas in the statutes and regulations that require clarification. A legislative package encompassing technical and substantive changes is being prepared for submission to the Legislature. Enactment of this legislation will enable the division to more effectively enforce the state labor laws.

IV. STATISTICS

The following statistics summarize the division's case-related activities during the eight months of FY94 it was in operation:

LEGAL/FLAEP CASE REVIEW	
A. Court Appearances	168
B. Number of different courts	51
C. Cases in Legal Review	515
D. Cases targeted for prosecution	35
FLABP/INTAKE STATISTICS	
Funds Recovered	1,063,144.46
A. Amount sent directly by the company to the complainant (Boston only)	$289,025.61
B. Amount received and forwarded by the Boston office	$507,881.45
C. Amount received and forwarded by the Springfield office	$266,237.40
PHONE CALLS HANDLED PER DAY: INTAKE UNIT	
A. Boston	500
B. Springfield	120
TOTAL:	620
OPEN CASES	
A. Boston	3,535
B. Springfield	156
C. Legal Review	164
D. Default Warrants	1,034
TOTAL:	4,889
DISPOSED CASES	
A. Closed Boston	1464
B. Closed Springfield	370
TOTAL CLOSED	1834
C. Rejected Boston	1156
D. Rejected Springfield	168
TOTAL CASES REJECTED	1324
E. Private Right of Action	325
F. Legal Disposition	51
TOTAL P.R.A. & DISPOSITION	376
TOTAL CASES DISPOSED	3534
BID PROTESTS	
A. Bid protests filed	183
B. Bid protests resolved	151
C. Bid protests outstanding	32
D. Informational Phone Calls Answered	2000

WAIVERS:

The Office of the Attorney General may, when special circumstances are shown to exist, issue a waiver that allows an employer to forego adherence to a particular labor statute for a specified period of time. The Fair Labor Division granted 227 waivers during the eight months of FY94. They are:

A. Special student worker license	112
B. Meal break exemption	39
C. Seven day continuous operation	47
D. Three hour minimum daily requirement	2
E. Seasonal Exemption	16
F. Theatrical (minor)	5
G. scaffolding	3
H. Uniform deduction	1
J. Minors: late hours	1
J. Ten hour days	1
TOTAL WAIVERS GRANTED	227

V. DEPARTMENT OF EMPLOYMENT AND TRAINING

The Attorney General's Employment and Training Division provides legal assistance and representation to the Department of Employment and Training (D.E.T.) for criminal enforcement of the Employment Security Law. Employers who fail to comply with the provisions of the statute by not filing the required reports and/or not paying the required taxes necessary to fund the operations of D.E.T. are subject to prosecution by this division. Criminal complaints are also lodged against individuals who commit fraud by collecting unemployment benefits while employed. This division also briefs and argues appellate actions arising from the decision of the Director of Employment and Training with respect to the granting or denying of unemployment benefits.

Due to the close relationship with the subject areas enforced by the Fair Labor Division, organizationally the D.E.T. has been placed under the umbrella of Fair Labor. The following data summarizes the activities of the D.E.T. during FY94.

DET LEGAL CASE REVIEW STATISTICS

	ND 1993	CASES REFERRED 1994	ND 1994	
Board of Review*	12	1	(11)	
Larcenies	853	45	717	(181)
Employer Contributions	839	54	776	(117)
Special Prosecutions	11		0	
YEAR END TOTALS	1713	99	1494	(320)

*Appellate actions arising from decisions of the D.E.T. Board of Review.

	19-93	END 1994
Court Appearances	860	706
Number of different courts	354	309
Cases disposed*	242	289
Restitution collected	$866,488.14	$822,021.65

*Cases disposed indicates cases that resulted in a court finding. Closed cases are for inventory statistics.

MEDICAID FRAUD CONTROL UNIT

1. INTRODUCTION

The Massachusetts Medicaid Fraud Control Unit (MFCU) was established in 1978 as a result of federal legislation authorizing individual states to investigate and prosecute waste, fraud and abuse within the Medicaid Program. The Massachusetts Unit has been certified annually since that time and receives 75% of its operating budget from the federal government.

Congress continues to fund the Massachusetts Unit because of its commitment to prosecute providers who abuse the system and take advantage of those most vulnerable - the poor and elderly who depend on Medicaid for health care. During the previous 12 months the Massachusetts Medicaid Program administered over 3.5 billion for health care goods and services to nearly 600,000 recipients.

The focus of this Unit continues to be criminal prosecution and civil enforcement of health care providers who defraud the Commonwealth's Medicaid Program or who abuse and neglect nursing home residents. Investigating and prosecuting Medicaid provider fraud is a major responsibility in Massachusetts, as the state Medicaid Program is the largest line item in the state budget.

During FY 194 MFCU received a total of 678 inquiries and complaints via telephone and mail. The vast majority of those related to neglect and mistreatment of residents in long term care facilities. MFCU conducted both preliminary and formal investigations of these matters resulting in the statistics reported below. A total of 725 matters were processed for potential investigation. Of those, 75 were opened by MFCU investigators as formal fraud investigations. During this period a staff of seven Assistant Attorneys General, an investigative staff of eighteen and support staff of four significantly increased enforcement activity over previous years. A staff of three is currently assigned to MFCU's regional office in Springfield.

The year was highlighted by continued scrutiny of abuse, neglect and mistreatment referrals from long-term care facilities. As reported below, criminal complaints were issued against a variety of defendants in all regions of the state. Prosecutions of nursing home employees ranged from abuse, neglect and assault and battery to violations of resident civil rights. A prosecution team of two investigators along with an Assistant Attorney General continue to carry out Attorney General Scott Harshbarger's commitment to vigorous prosecution of physical, financial and emotional abuse of our elderly.

In November 1993, Attorney General Harshbarger issued a Report entitled: "Abuse Neglect and Mistreatment in Massachusetts Nursing Homes: Enforcement and Prevention". Harshbarger's MFCU, in conjunction with Department of Public Health, Executive Office of Elder Affairs, and Massachusetts Federation of Nursing Homes trained over 1200 health care providers on detecting, reporting and preventing patient abuse.

MFCU fraud and larceny prosecutions during FY 194 resulted in the incarceration of five individuals. Sentences imposed on larceny and false medicaid claims convictions ranged from two years to 30 days.

Harshbarger's MFCU also maintained its aggressive enforcement of pharmaceutical manufacturers, distributors and retailers. The unit returned $800,000 to the Medicaid program as a result of anti- kickback and discounting enforcement investigations. The following criminal and civil enforcement actions were taken by the MFCU during FY '94:

CRIMINAL FRAUD CASES	
Formal Investigations Initiated	75
Investigations Completed and Closed	91
Individual Indictments	90
Corporate Indictments	7
Individuals Convicted	21
Corporations Convicted	4

PATIENT ABUSE/NEGLECT CASES	
Abuse and Neglect Referrals	633
Abuse & Neglect Preliminary Investigations	307
Total Criminal Complaints and Indictments	25
Prosecutions Completed and Closed	38
Individuals Convicted	27'
Pending Prosecutions	17

CIVIL/CRIMINAL FINANCIAL RECOVERIES		
Civil Overpayments Recovered		$359,172.32
Civil Damages Paid		395,000.00
Criminal Restitution Ordered		145,598.73
Other Civil Recoveries		400,000.00
Civil Investigative Costs		8,350.05
Civil Patient Needs Accounts	(PNA)	14,459.05
Criminal Fines Imposed		45,880.00
Other Costs Paid		840.00
	TOTAL:	$1,369.300.15

The number of 27 persons convicted of patient neglect and/or abuse includes 19 prosecutions which were "continued without a finding of guilty" by the Court against the recommendation of Attorney General Harshbarger.

CRIMINAL PROSECUTIONS

1. Worcester Pharmacist Pleads Guilty

A Worcester pharmacy and its owner plead guilty in Suffolk Superior Court to taking $5,000 and filing false claims for payment from the Medicaid Program. The defendant was sentenced to one year in the House of Correction, suspended for one year, and ordered to perform 150 hours of community service and pay $30,000 in fines, penalties, and restitution. Between March 1990 and June 1993, the defendant billed the Medicaid Program for prescription drugs and durable goods that were never provided to the Medicaid recipients named in the bills.

2. Connecticut Lab Owner Charged with Fraud, Kickbacks

A Bridgeport drug testing laboratory and its president were indicted by a Suffolk County Grand Jury for larceny, attempted larceny and filing false Medicaid claims in a scheme which allegedly bilked $150,000 from the Medicaid program. The defendants were each indicted on seven counts of larceny by a continuing scheme, and 60 counts of filing false claims to the Massachusetts Department of Public Welfare's Medicaid program. The company was additionally charged with five counts of individual kickbacks. The kickback allegations center around the defendants arranging for and providing free testing for non-Medicaid clients in exchange for continued Medicaid business.

3. Taxi Company Owner and Four Others Plead Guilty

A Suffolk County Grand Jury returned multiple indictments against a Woburn taxi company, its owner and four company employees on charges ranging from alleged Medicaid provider fraud to state tax violations. The charges related to the defendants' alleged activity between June 1990, and February 1993, when they allegedly charged Medicaid for separate rides when two or more recipients shared the same taxi.

In May 1994, the company and its owner plead guilty to charges of Medicaid fraud, larceny, and filing false claims totaling approximately $28,000. The defendant was sentenced to a suspended two-year House of Correction sentence with probation for a period of three years and 100 hours of community service. The defendants were also ordered to make restitution in the amount of $28,000 to the DPW and pay fines and surfines of $12,500. The remaining defendants plead guilty and received suspended jail sentences.

4. Lynn Physicians Charged With Distribution and Fraud

Two Lynn Physicians were charged with multiple controlled substance and Medicaid fraud offenses involving the alleged illegal distribution of drugs to drug-addicted patients. The defendants allegedly tried to take advantage of a vulnerable

Medicaid population by indiscriminately dispensing illegal drugs to poor and drug-addicted Medicaid patients. Both were charged with multiple counts of illegal distribution of class C, D and E substances within 1,000 feet of a school, illegally dispensing controlled substances without being registered, and violations of the state Medicaid fraud laws.

5. Springfield Woman Sentenced to Jail for Embezzlement

A Springfield woman was sentenced to one year in the House of Correction, 30 days to be served, after being found guilty in Hampden Superior Court of embezzling more than $27,000 from handicapped clients whom she was under contract by the state Department of Mental Retardation (DMR) to serve. The charges stem from a MFCU investigation into the defendant's actions as the executive director of Davenport, Inc., a non-profit corporation which contracted with DMR to provide residential services to handicapped persons. As executive director of Davenport, Inc., the defendant had control over many of the clients, bank accounts.

6. Five Charged in Separate False Billing Cases

Five individuals were charged in separate unrelated cases involving the alleged theft of nearly $70,000 in Medicaid funds as a result of alleged false billing by those who provide health care to home-bound individuals. Each of these cases stems from alleged false billings made by the defendants to either the DPW or DMR for personal care benefits to Medicaid recipients. The MFCU prosecutions were joint initiatives with the state Division of Medical Assistance, DMR, DMH, and Disabled Persons Protection Commission.

7. Newton Psychiatrist Indicted for Alleged Fraud

A Newton psychiatrist was indicted by a Suffolk County Grand Jury on charges of larceny and filing false Medicaid claims. The defendant was indicted on nine counts of filing false Medicaid claims and nine counts of larceny over $250 in an alleged Medicaid fraud scheme totaling more than $35,000. The defendant allegedly billed the Medicaid program for services that were either never performed or charged as longer office visits than those which actually took place. The indictments also allege that the defendant received payments from the Medicaid program for claims submitted while he was allegedly out of state.

8. Somerset Woman Charged in Nursing Home Theft

A former bookkeeper from Somerset was charged with stealing funds totaling nearly $75,000 from a Fairhaven nursing home. The defendant, a former bookkeeper and office manager at the Nichols House Nursing Home, was allegedly involved in an embezzlement scheme in which she allegedly withdrew money from residents' trust accounts at the 108-bed facility where she worked. The

defendant allegedly made the withdrawals account at local automatic teller machines.

III. CIVIL ENFORCEMENT

1. MFCU Reaches Settlement with Boston Non-Profit Clinic

Attorney General Harshbarger and Bruce Bullen, Commissioner of the Division of Medical Assistance, entered into a civil settlement with a Boston non-profit mental health clinic which provides a variety of clinical services to children and adolescents in the greater Boston area. Under the terms of the settlement, the Clinic agreed to return $144,000 to the Medicaid program as a result of claims submitted for payment which were not supported by clinical records. As part of the settlement, the Clinic has also agreed to waive payment of 2,110 hours of therapy provided to children in Boston which may have been Medicaid reimbursable.

2. Drug Manufacturer Agrees to $200,000 Court Settlement

A consent judgment was filed with a New York manufacturer and distributor of pharmaceuticals totaling $200,000. The defendant agreed to pay $150,000 in civil fines to the Commonwealth of Massachusetts and another $50,000 to sponsor a community service program which will benefit Medicaid recipients. The defendant offered a variety of vacation packages to promote the purchase of its products by pharmacies throughout the state. The company's promotional practices violated the anti-kickback provisions of the state Medicaid and health care laws.

3. Drug Company Pays 2000,000 to Settle Kickback Claims

A civil settlement was reached with a national drug manufacturer over claims that its drug marketing program violated state Medicaid and anti-kickback laws. The company agreed to pay the Massachusetts Medicaid program $200,000 after having voluntarily discontinued the manner in which it marketed a product. The agreement signed concludes an investigation which found reasonable cause to believe that the company violated the state Medicaid and health insurance anti-kickback laws. At issue was a $35 fee provided to pharmacists, which allegedly amounted to an illegal kickback.

4. MFCU Reaches $405,000 Settlement Over Marketing Practices

A $405,000 settlement was reached with a national drug manufacturer and two of its Massachusetts customers over claims that the companies violated Medicaid anti-kickback and state and federal discount statutes. In separate settlement agreements, a New Jersey manufacturer; and a Woburn pharmacy agreed to pay a total of $195,000 in cash to the state Medicaid program and another $200,000 in free pharmaceutical goods to be distributed

to state Medicaid-insured residents. Another Massachusetts pharmacy paid $10,000 to settle similar MFCU claims.

IV. NURSING HOME ENFORCEMENT

1. Consent Judgment Filed Against Nursing Home Owner

A $16,550 civil consent judgment was filed in Suffolk Superior Court with a Jamaica Plain nursing home owner for alleged violations of state laws and regulations in the operation of the patients' personal needs allowance bank account. The owner is banned from operating any long-term care facility in the Commonwealth. The owner and operator of the Bradley Nursing Home, Jamaica Plain, entered into a judgment and settlement agreement which requires him to pay $13,550 directly to 13 former residents of the Bradley Nursing Home for alleged mismanagement of the residents' personal needs allowance bank account.

2. Former New Medico Accountant Sentenced in Theft Scheme

A former accountant for the now-defunct New Medico Associates, Inc. was sentenced in Suffolk Superior Court to four years in the House of Correction after pleading guilty to multiple counts of larceny. Two other defendants also plead guilty and were each sentenced to jail time. The charges stem from an investigation into an embezzlement scheme totaling $240,000 from New medico, a Boston-based health care management company.

3. Former Fairhaven Attorney Found Guilty After Trial

A Former Fairhaven Attorney was found guilty of 33 felony and misdemeanor counts involving nearly $40,000 by a Suffolk County Jury, following a week-long trial. The defendant was found guilty on two counts of larceny over $250; 13 counts of perjury; two counts of forgery; three counts of submitting false Medicaid claims on behalf of Gardner's Grove Nursing Home Inc., of Swansea; and four counts of making false representations to the Medicaid program on behalf of Center Green Rest Home, Inc., of Fairhaven. The defendant was sentenced to serve a suspended three to five year state prison sentence.

4. Nursing Home Owner Convicted of Stealing from Medicaid

A Revere nursing home owner plead guilty to charges of Medicaid fraud that involved the theft of expensive food items from the nursing home. The defendant was sentenced to a suspended one year in the House of Correction. He was also sentenced to one-year of probation, and ordered that he pay $20,000 in restitution for the stolen food and a $12,500 fine. There was also a two-count civil complaint and settlement agreement which alleged the defendant wrongfully received $32,500 from Medicaid from January 1989 to December 1992. The defendant was ordered to pay Medicaid an additional $32,500.

V. PATIENT ABUSE/NEGLECT PROSECUTIONS

1. AG Issues Report on Nursing Home Patient Abuse

A November, 1993 report showed that MFCU prosecutions of nursing home patient abuse cases more than doubled and the number of investigations increased more than 15 times since 1990. The report, entitled "Abuse, Neglect and Mistreatment in Massachusetts Nursing Homes: Enforcement and Prevention", was released at a conference on the prevention of nursing home patient abuse and neglect. Approximately 500 nursing home staff members and elder advocates attended the conference.

2. Lakeville Woman Charged with Patient Abuse in Wareham

A Lakeville woman was charged in Wareham District Court with patient abuse involving the alleged abuse of a 30-year-old head injured patient. The defendant, a certified nurse-aide at the Greenery, Middleboro, was charged with one count of patient abuse. She was terminated by the Greenery five days after the alleged abuse took place.

3. Milton Woman Charged with Neglect

A Milton woman was charged with criminal neglect and mistreatment of a 98-year-old resident of a Dedham nursing home as a result of an incident at the facility on January 29, 1993. The defendant was charged in Dedham District Court with a single count of patient neglect and mistreatment for an alleged incident while she was employed as a certified nurse-aide at Eastwood Care Center, Dedham. The defendant was terminated from the facility 10 days after the alleged incident.

4. Jamaica Plain Man Admits to Patient Abuse

A Jamaica Plain man admitted to sufficient facts in the West Roxbury District Court to patient abuse of a 77-year-old male patient at a Boston nursing home. The defendant, admitted that there were sufficient facts for a guilty finding to one count of patient abuse. Judge Paul Murphy continued the case without a finding for one year. The Commonwealth had recommended that the defendant be found guilty and sentenced to 30 days in the House of Correction, suspended for one year, with conditions that he not be allowed in a nursing home. The defendant assaulted a 77-year-old male patient in June, 1993 while he was employed as a nurse's aide at Jamaica Towers Nursing Home, Boston. He allegedly forced the resident from his chair while twisting the resident's arm behind his back and forcing him onto an elevator. The defendant released the victim when he saw a social worker from the home approach. He also verbally assaulted the resident.

5. Bridgewater Woman Found Guilty of Abuse

A Bridgewater woman was sentenced in Brockton District Court for patient abuse of a 69-year-old man in the Forge Pond Nursing Home in East Bridgewater. The defendant admitted to one count of assault and battery and one count of patient abuse on July 30, 1993. Brockton District Court Judge David Nagle entered a finding of guilty and sentenced her to probation for two years. On August 15, 1992, the defendant was the supervising nurse for the evening shift. She participated in tying the victim into his wheelchair, pouring various substances over his head and spraying shaving cream over his body.

6. Former Nursing Aide Admits to Assault & Battery

A Former Chicopee nursing assistant admitted to sufficient facts to find her guilty of patient abuse and assault and battery in Chicopee District Court. The defendant allegedly assaulted two elderly residents of the Chicopee Municipal Home.

7. Former Nursing Home Aide Pleads Guilty to Patient Abuse

A Brighton man plead guilty in Concord District Court to charges of patient abuse and indecent assault and battery. The defendant was ordered to serve two years of probation and he was ordered not to work in a long-term care facility during that period. The defendant worked as a nurse's aide at Mediplex of Lexington. Between March and May 1992, on three separate occasions, he improperly touched two elderly female residents.

8. Pittsfield Man Arraigned for Alleged Patient Abuse

A Pittsfield man was charged in Great Barrington District Court for alleged patient abuse of three elderly residents of the Great Barrington Healthcare Facility. The defendant, employed as a certified nurses aide, allegedly engaged in a number of assaults. The defendant allegedly grabbed an 82-year-old man by the head and shook and taunted him. He also allegedly lifted an 89-year-old female resident by the shoulders and roughly placed her in bed. MFCU investigators also allege that he provoked a 92-year-old man into becoming combative, and then allegedly poked him, grabbed him by the wrist, and jerked him back and forth in his wheelchair.

9. East Bridgewater Woman Admits to Patient Abuse.

An East Bridgewater woman admitted to sufficient facts to warrant a finding of guilty in Brockton District Court for abusing of a 70-year-old male patient at the Forge Pond Nursing Home in East Bridgewater. The defendant participated in tying a 69-year old male into his wheelchair, and in pouring various substances over his head. She also wanted to photograph the victim with the substances on him. The defendant was sentenced

to two years of probation and recommended that she lose her certification as a nurse's aide.

10. Medford Woman Admits to Patient Abuse in Lexington Home

A Medford woman admitted to sufficient facts to warrant a finding of guilty in Concord District Court for patient abuse and neglect, following an incident involving the abuse of an 85-year-old male patient at the Mediplex Nursing Home in Lexington. The defendant admitted to a single count of patient abuse and neglect. She was ordered to serve one year probation. The defendant will also be forbidden from working with children or the elderly during that time.

11. Former Easthampton Aide Admits to Patient Abuse

An Easthampton woman admitted to sufficient facts to warrant a finding of guilty in Northampton District Court on criminal neglect and abuse, and assault and battery charges for abusing a 78-year-old nursing home resident. The defendant abused a female resident of the Pine Rest Nursing Home in Northampton. The defendant punched the elderly woman in the chest while assisting the resident. Over the strong objections of the Commonwealth the case was continued without a finding for two years and prohibited the defendant from volunteering or working for a long-term care facility during that time.

12. Worcester Aide Pleads Guilty Patient Abuse Charges

The defendant admitted to sufficient facts in the Worcester Jury of Six on three counts of assault and battery, five counts of patient abuse and one civil rights violation. On diverse dates, the defendant struck two head-injured residents on the forehead with her hand and on one occasion used a racial slur against the resident during the assault. The judge found the defendant guilty, placed her on probation for two years and ordered her to perform 150 hours of community service.

13. Former Nursing Assistant Admits to Patient Abuse

A former nursing assistant at a long-term care facility located in Holyoke admitted to sufficient facts to warrant a guilty finding on patient abuse and assault and battery charges. The defendant admitted to sufficient facts on one count each of assault and battery and patient abuse at the Chapel Hill Nursing Home. The defendant admitted to slapping a 78-year-old moderately retarded resident at the facility in the back of the head when the resident resisted getting out of bed. She further admitted punching the woman in the back. She was sentenced to one year probation and ordered not to work as a nursing assistant in any health care facility during the term of probation.

14. Former Nurse's Aide Arraigned for Alleged Abuse

A Northampton woman with was charged with criminal abuse and assault and battery for allegedly abusing an 87-year- old resident of an Easthampton nursing home. The defendant allegedly roughly handled the female resident of the Hampshire Manor Nursing Home. The alleged action resulted in bruising to the resident's arm. She was terminated when Hampshire Manor became aware of the allegations.

15. Worcester Phlebotomist Admits to Patient Abuse

A Worcester woman admitted to abuse charges in Ayer District Court on a complaint alleging patient abuse and assault and battery at Woodford Nursing Home of Ayer. The defendant was assigned to obtain blood samples from a 95-year-old female resident. The resident repeatedly indicated to the defendant that she did not want the procedure performed. The defendant forcefully withdrew the resident's blood. The matter was continued without a finding for one year and the defendant was ordered not to seek or accept employment with the elderly.

16. Salem Woman Placed on Pretrial Probation

The defendant was placed on pretrial probation for two years and ordered to sign an agreement that she will not seek or accept employment in a nursing home. The defendant allegedly hit a 77-year-old male resident of the Life Care Center in Lynn. According to witnesses, she was feeding the resident who became disruptive. When, she allegedly threatened to take away his breakfast, he grabbed her hand. The defendant then allegedly became angry and struck the resident two times on the head.

17. Former Nurse's Aide Admits to Abuse in Webster

A former nurse's aide at a Webster nursing home admitted to sufficient facts in Dudley District Court on charges of patient abuse. The defendant punched the hand of an 85-year-old female resident of the Webster Manor Long Term Care Facility, three times after she and co-workers assisted the resident to her room. The case was continued without a finding for six months, with probation.

18. Brockton Woman Pleads Guilty to Patient Abuse

A Brockton woman plead guilty to single counts of patient abuse and assault and battery in Quincy District Court. The guilty pleas come after an investigation which looked into allegations that the defendant slapped and pushed two Alzheimer patients at the Braintree Manor Nursing Home. The defendant pleaded guilty to slapping an 85-year-old female patient twice on the buttocks, and slapping the face of an 89-year-old male resident two days later before pushing his face into a pillow. He was sentenced to one year of probation.

19. Tewksbury Man Indicted Indecent Assault & Battery

A Tewksbury man was indicted by a Middlesex County Grand Jury for the alleged patient abuse and indecent assault and battery of a 68-year-old mentally retarded male resident of the Country View Nursing Home in Billerica. The defendant was indicted on one count of patient abuse and indecent assault and battery for the alleged sexual assault.

20. New Bedford Man Admits to Sufficient Facts for Abuse

A New Bedford man admitted to sufficient facts in New Bedford District Court on one count of patient abuse. The defendant was charged with striking a 91-year-old female resident across the face at the Sassaguin Nursing Home in New Bedford. The case was continued without a finding for six months.

21. Attleboro Woman Admits to Nursing Home Abuse

An Attleboro woman admitted to sufficient facts to warrant a finding of guilty in Dedham Jury of Six on charges of patient abuse and assault and battery. The defendant stuffed a damp washcloth into an 84-year-old Plainville Nursing Home resident's mouth, wet the cloth again and then threw it at the victim as she lay in bed. The defendant also harassed the resident by placing a nightlight with a hot bulb within six inches of her face during the incident. The case was continued for one year with probation.

22. Lowell Woman Admits to Assault and Battery

A Lowell woman admitted to sufficient facts to warrant a guilty finding for assault and battery and patient abuse at the Palm Manor Nursing Home in Chelmsford. She was charged with three counts of assault and battery, and three counts of patient abuse. The defendant a nurses aide choked and kicked three female residents, all in their 70's on several occasions. She also forced a water hose into the mouth of one of the residents. The case was continued without a finding for three years. As a condition of her probation, she cannot work in a nursing home and must be evaluated by the probation department to determine her counseling needs.

FAMILY AND COMMUNITY CRIMES BUREAU

The Family and Community Crimes Bureau is responsible for policy and program development in four subject areas: children and youth; elders and persons with disabilities; family violence; and victims of crime. In addition, the Victim Compensation and Assistance Division, which oversees the provision of compensation to victims of violent crime, comes under the supervision of the Family and Community Crimes Bureau.

A. THE ELDERLY

The Attorney General has made protection of elders a top priority. For this reason, the Family and Community Crimes Bureau has continued its focus on elder abuse and neglect, consumer fraud and financial exploitation.

In FY'94, the Elderly Protection Project, based in the Family and Community Crimes Bureau, provided comprehensive, statewide training to improve the law enforcement community's response to abuse, neglect and financial exploitation of elders. This project, funded through a grant from the Massachusetts Committee on Criminal Justice, received national recognition from the Bureau of Justice Assistance, United States Department of Justice, as a national model.

These trainings are geared to three different levels of expertise: (1) introductory training for recruits; (2) basic in-service training for veteran officers; and (3) two-day advanced training, presented in conjunction with adult protective service workers. During the past year, the Project presented sixteen of the advanced law enforcement trainings around the state. The trainings involved 470 police officers from over 200 departments, 63 protective service workers from all of the 27 protective service agencies in Massachusetts, and 38 other professionals from various agencies. The Project also trained 829 police recruits at 12 different training academies. The second draft of the Attorney General's Revised Long Term Care Regulations was released in May, 1994. These regulations have not been amended since they were first promulgated in 1978. This draft included substantive changes in the following areas: non-discriminatory access to long term care; discharge and transfer; inclusion of the chronic care and rehabilitative hospitals; and conformity with the federal law called "OBRA." These regulations were developed by the Consumer Protection Division in collaboration with the Family and Community Crimes Bureau.

The Attorney General also remained active in legislative initiatives to develop "assisted living" for elders, to respond to the need for a supportive living environment for frail elders to allow them to age in place with dignity and independence. The Family and Community Crimes Bureau has continued to work cooperatively with private developers, elder advocates, and state agency representatives to secure passage of legislation which

will encourage development of assisted living facilities while at the same time providing important consumer safeguards. In addition, the Attorney General filed and advocated for legislation toughening elder abuse laws and sanctioning elder neglect.

The Family and Community Crimes Bureau filed a petition in the Middlesex Probate Court to vacate the will of an elderly woman, signed two days after a psychiatrist had deemed her incompetent to write a will, which left her entire estate to a younger non-relative whom she had known only briefly. The petition alleges that the respondent failed to make the Attorney General a party to the probate of the will, as required by law when it appears that the person writing the will had no relatives, and that the respondent's failure to advise the Probate Court of the elderly woman's incompetence was a fraud upon the court.

Bureau staff also participated on steering committees for several national projects undertaken to provide better services to and protection of the elderly.

Finally, the Elder and Disabled Issues Task Force continued to meet throughout the year to address issues such as guardianship reform, national health care proposals as they affect the elderly, and other legislation of particular interest to the elderly.

B. FAMILY VIOLENCE

The Attorney General continued to develop programs and policies to comprehensively address the problem of family violence.

In July, 1993, as part of the Attorney General's health care and domestic violence initiatives, the Family and Community Crimes Bureau prepared and presented a comprehensive training on the early identification, assessment and treatment of domestic violence to all staff of the Dimock Community Health Center in Boston. The training, which involved legal, medical and social service professionals, focused on some of the most critical legal and medical issues in domestic violence prevention and protection efforts, such as ways of interviewing and assessing family violence victims in a health care setting, the impact of domestic violence on children, and legal measures to protect women and their children. This training for health care professionals will be replicated at the Bowdoin Street Health Center in the winter of 1994, and will be videotaped and disseminated to other health care and social service agencies.

In addition, the Bureau participated in numerous other trainings of health care professionals on domestic violence issues. The Bureau also presented the Attorney General's third annual day-long Domestic Violence Training Conference for police. Approximately 300 police officers attended the training. The

conference featured presentations on the stalking law, interjurisdictional arrest, injury documentation, special problems faced by immigrants who are victims of domestic violence, and workshops focused on specific techniques and legal issues involved in family violence cases. In addition, the Bureau Chief participated as a faculty member in all sessions of the statewide training on domestic violence for judicial system personnel conducted by the Trial Court, and as an active member and Legislative Committee Co-Chair of the Governor's Domestic Violence Council.

The Family and Community Crimes Bureau prepared a report summarizing the activities and accomplishments of the District Attorneys' Domestic Violence Prosecution Units. The report highlighted the challenges prosecutors and advocates faced in implementing different components of their domestic violence programs, the strategies they utilized to overcome these obstacles, and the accomplishments they achieved.

Finally, the Bureau drafted and the Attorney General filed several pieces of legislation aimed at strengthening and making technical corrections to domestic violence laws in the Commonwealth and was active in the drafting and passage of legislation to remove firearms from batterers.

C. CHILDREN AND YOUTH

The School Superintendent's Advisory Group, chaired by the Attorney General and staffed by the Family and Community Crimes Bureau, continued to meet on a quarterly basis. This Group provided a forum for discussion of issues such as education reform, bilingual education, school violence and expulsion policies. Its discussions contributed to the input provided to legislative and executive agencies on these issues.

The Attorney General's Office continued its effort to establish collaborative relationships among the Department of Education, local school districts and local law enforcement officials. In April, 1994, the Bureau presented a statewide conference on the issues of school safety and cooperation between local school officials and law enforcement on substance abuse and violence prevention matters.

The Children's Issues Group, staffed by the Family and Community Crimes and Government Bureaus, continued to review issues of concern to children's advocates to attempt to achieve resolution short of litigation and to foster a better understanding between children's advocates and government.

Bureau staff were also active in reform efforts underway in the areas of expulsion from school of disruptive students and study of alternative education programs.

In the area of juvenile justice, the Family and Community Crimes Bureau drafted and filed several bills tightening laws affecting serious juvenile offenders. Finally, the Family and Community Crimes Bureau presented the Attorney General's second training program for campus police and administrators. The conference included presentations on campus police powers and responsibilities; campus liability; Criminal Offender Record Information (CORI) and its relationship to school discipline; drug and alcohol abuse; date rape; and hate crimes.

D. VICTIM ISSUES

The Attorney General continued to personally chair the Victim and Witness Assistance Board which oversees the Massachusetts Office for Victim Assistance (MOVA). MOVA had previously dramatically downsized its staff, consolidated its responsibilities, streamlined its data information systems, and redesigned its oversight of the Victim Bill of Rights and G.L. c. 258B programs, including the Victim Witness Assistance Fund, under the leadership of its Executive Director, Heidi Urich.

In addition to its continued responsibilities for dissemination and oversight of VOCA grants to 34 community-based agencies, this year marked MOVA's presentation of its largest Victim Rights Conference, attended by over 500 victim rights advocates and other social services professionals, in April, 1994. The conference focused on current issues including domestic violence, sexual abuse and victim backlash, gun control, and the victim's role in the criminal justice system.

With support from the Family and Community Crimes Bureau, MOVA drafted and filed major victim rights legislation which received a favorable committee report, and succeeded in gaining passage of reforms to the Victim Witness Assessment statute to increase the collection of victim witness fees.

MOVA also conducted a year-long, four-stage training program to develop additional Community Crisis Response Teams; co-sponsored training on homicide cases for victim witness advocates; provided training on civil remedies and monetary resources available for victims; supported establishment of a Domestic Violence Civil Court Advocates program; and provided input on development of the new one-trial rules in the District Court.

VICTIM COMPENSATION AND ASSISTANCE DIVISION

On January 4, 1994, the Legislature enacted G.L. c. 258C, entitled "Compensation of Victims of Violent Crime." This new law, which went into effect on April 14, 1994, significantly reforms the process by which victims of violent crime receive financial compensation for medical, funeral and mental health counseling expenses, an well as for lost wages and loss of financial support. Under the old law, G.L. c. 258A, victims were required to go through a long and often adversarial court process in order to obtain compensation. The new law converts this court-based process to an administrative process in which all claims are filed, investigated and approved for payment by the victim compensation and Assistance Division. Victims who disagree with the decision on their claim for compensation have the right to administrative review, as well as judicial review, of the Program Director's decisions.

Recognizing the need for reform, the Division strongly advocated in support of G.L. C. 258C. As a result of this new legislation, the Division anticipates that decisions on claims for compensation will be made in a matter of months rather than a matter of years, as was the case under the old law. By removing the compensation system from the already overburdened courts, the Division also anticipates that the vast majority of victims will avoid the revictimization of having to return to court in order to obtain compensation for their out-of-pocket crime related expenses.

All Claims filed before April 14, 1994, will continue to be adjudicated under the court-based system. In 1993, the Division received 911 court-based claims from victims of violent crime. It closed 1231 court-based claims from representing a twenty-five percent increase in the closure rate from the previous year. Payments to victims totaled $3,358,740.57. This amount represents a seventeen percent increase over the previous year, and the largest expenditure of funds to crime victims in the Division's history. Despite its increased efficiency in closing cases, the Division maintains a case load of approximately 2,059 cases which must be disposed of through the court-based system. In order to expedite the disposal of these cases, the Division implemented streamlined discovery and verification procedures, and provided additional district court trial and appellate training to Division attorneys. Legal and investigative interns were brought into the Division throughout the year in order to assist with the disposal of court-based cases.

In the last half of the fiscal year, significant efforts were directed toward the implementation of the new law. Application forms and explanatory brochures were created and distributed to law enforcement agencies throughout the Commonwealth. Outreach and training efforts were directed toward advocacy groups, court advocate programs, district attorney's offices, and services providers. Draft regulations were issued and public hearings

held in order to receive broad input on Division regulations and procedures. The Division also began the critical process of implementing a computerized Claims tracking system in order to manage an anticipated increase in the number of claims.

Claims received under the new system totaled 150. By year end, the Division was beginning to issue decisions on these claims, and it appeared that most claims would be resolved within three to six months of receipt of the claim. Expected financial pressures on the victim compensation fund led the Division to undertake a careful review of cost-cutting measures. In order to ensure that all other avenues of compensation are fully exhausted before victim compensation is awarded, Division staff received comprehensive training in the broad range of public and private benefit programs. Specific efforts were directed toward ensuring that eligible victims apply for hospital-based "free care" (G.L. c. 118F) prior to obtaining victim compensation. In conjunction with its reform efforts, the Division undertook to coordinate and host, on a quarterly basis, regional meetings of crime victim compensation programs, most of which operate under administrative systems. Directors and representatives of the Maine, Vermont, New Hampshire, Connecticut and Rhode Island compensation programs met in Boston to receive expert training and provide peer problem solving around topics such as investigative techniques, mental health counseling, and outreach. The Division also assisted in planning and coordinating the annual training conference of the National Association of Crime victim Compensation Boards which will be hold in Boston in November 1994.

Finally, the Division continued to provide a range of services and assistance to victims in dealing with the financial impact of crime, including creditor intercession services, and assistance in locating service providers. The provision of compassionate services to crime victims remained the Division's top priority. Massachusetts hospitals to assess compliance with free care pool notification regulations. The third project set out to improve consumer information and awareness of health care insurance options. The group identified a series of questions which every consumer should ask prior to purchasing a health insurance policy.

PUBLIC PROTECTION BUREAU

The Public Protection Bureau (PPB) is comprised of six divisions: Civil Rights, Consumer Protection and Antitrust, Public Charities, Regulated Industries, Environmental Protection, the PPB chief Prosecutor's Unit, and the Civil Investigations Division. Additionally, the Consumer Protection Division contains the Consumer Complaint and Information Section and also oversees the local consumer fund which provides grants to local community groups to mediate and resolve consumer complaints at the local level.

Bureau personnel also coordinate and staff the Attorney General's innovative program to reduce youth violence, SCORE-Student Conflict Resolution Experts. This program is a school-based mediation program using trained student mediators to resolve disputes among their peers and prevent them from escalating into violence. This unique program has been recognized nationally for is effectiveness in preventing violence and the Attorney General is committed to expanding it to every school in the Commonwealth.

The role of the divisions in the Public Protection Bureau is to bring affirmative litigation on behalf of the Commonwealth of Massachusetts, its citizens and businesses in the areas listed above. PPB also has brought certain criminal cases in the consumer and health care fraud areas.

The Public Protection Bureau also is responsible for the development and implementation of policies and initiatives dealing with health care and elder issues. Some of the initiatives undertaken this year are described below:

Health Care Initiatives and Cases

In 1994, the Public Protection Bureau continued to be actively involved in many areas of health care litigation, legislation and policy initiatives. In addition to bringing numerous cases under the Attorney General's law enforcement powers and proposing health insurance market reform and anti-fraud legislation, the Attorney General undertook other initiatives to promote access to health care for all citizens of the Commonwealth.

The Attorney General's Health Care Advisory Group continued to meet and to focus on four initiatives. First, as part of the focus on responsibilities of nonprofit hospitals, providers and insurers to meet health care needs of the communities they serve, the Attorney General developed Community Benefits Guidelines for Nonprofit Acute Care Hospitals in the Commonwealth. A second initiative was the "Consumer Education and Awareness Campaign to emphasize the availability of and access to the Massachusetts free care pool. This group issued a "Report on Compliance with Free Health Care Disclosure Laws" which summarized the results of a survey undertaken by the Office of the Attorney General, in

which the office surveyed insurance policy in order to be better informed. A pamphlet titled Choosing a Health Plan; the 10 Most Important Questions You Should Ask is now available to consumers. Fourth, the Attorney General continues to develop legislation to encourage insurance market reform and the development of health insurance purchasing cooperatives in Massachusetts.

During this past year, Attorney General Harshbarger served for the second consecutive year as the Chairman of the Health Care Task Force of the National Association of Attorneys General. Staff from the Public Protection Bureau continued to coordinate this role on behalf of the Attorney General. Some of the initiatives undertaken by the NAAG Health Care Task Force this year under the leadership of Attorney General Harshbarger were:

- A survey of all attorneys general offices on health care activities;

- Letters to key members of Congress urging universal coverage;

- Support of all payor fraud legislation;

- A memorandum that describes a series of impacts and issues concerning the effects of the Clinton Health Security Act on various areas of state law and government.

Bureau staff have spoken for and represented the Attorney General on various health care panels and conferences.

The Public Protection Bureau has also continued its efforts in more traditional areas implicated by the health care system. The Consumer Protection/Antitrust Division has brought actions against persons responsible for operating scams in the health care products business. The Bureau's activities also extend to representing consumers' interests in rate hearings on non-group and medex rates, employees who fail to remit premiums paid by employers, fraudulent home health care providers and obtaining protective receiverships over financially troubled nursing homes.

CONSUMER PROTECTION AND ANTITRUST DIVISION

The Consumer Protection and Antitrust Division enforces Massachusetts General Law chapters 93 and 93A as well as other state and federal consumer protection and antitrust statutes. The Division's case load primarily consists of actions affecting large numbers of vulnerable consumers who have been harmed by illegal activities, particularly fraud. Additionally, the Division seeks to protect and promote competition so that consumers are offered goods and services of higher quality at lower prices. Other efforts include regulatory and legislative activities, participating in consumer outreach, and mediating individual complaints through the Consumer Complaint Section and the Local Consumer Programs.

In fiscal year 1994, the Division was responsible for obtaining the largest recovery from a hospital (over $1,500,000 in University Hospital) and largest recovery in a used car case (over $450,000 in Visone). Other significant recoveries include $378,000 in Jordan Marsh, $250,000 in Direct American Marketers, $240,000 in Equifax and $200,000 in Payco. In addition, the Division was responsible for promulgating the nation's first hospital merger guidelines, and the Commonwealth's first survey of compliance with Massachusetts' sale of cigarettes to minors law.

MONEY RECOVERED

CIVIL PENALTIES/ATTORNEYS' FEES/COSTS $1,079,766

CONSUMER RESTITUTION $2,390,896

LOCAL CONSUMER AID FUND $ 414,000

COMPLAINT SECTION TOTALS:

Direct Refunds to Consumers	$ 89,294
Amount Saved Through Settlements	$ 113,764
Amount Received in Goods & Services	$ 197,051

OTHER:

Keds	$134,124 to charities
Loewen Group	$ 15,000 to charities
Robinson	$ 17,500 for lead contractor and inspector training
Visone	$180,000 in vans for the Massachusetts Council on Aging
First Investors	$100,000 for consumer education
Gordon Brothers	$ 50,000 to Greater Boston Legal Services
Designers Clothing Limited	100 suits to homeless shelter
Delaware v. New York	$23,000,000 to the Commonwealth

In addition, $6,000,000 in consumer benefits and reduced payments were also made possible through the Dime Savings Bank agreement, and $32,000,000 in restitution was made available nationwide in the First Investors settlement.

ANTITRUST

Comm., et al. v. Keds Corp.

On September 27, 1993, the Office, in conjunction with 40 other states, announced a $7.2 million settlement with the Keds Corporation arising from an alleged nationwide scheme to set prices on six styles of sports shoes for women and to prevent discounting by retailers. Purchasers allegedly paid an average of $1 - $1.25 more than they would have had the company not imposed price-fixing.

Massachusetts' $134,124 share of the settlement was presented to five charities to be used in programs that benefit women: The Women's Sports Foundation, The American Cancer Society, The American Red Cross, the Boys and Girls Club of America and The Better Home Foundation.

Comm. v. Loewen Group International, Inc., et al.

On February 7, 1994, the Division entered into a consent decree in federal District Court for the District of Massachusetts with Loewen Group International, Inc., a Canadian corporation, and two Massachusetts subsidiaries, Loewen Cape Cod Holdings (1991), Inc. and Doan Beale & Ames, Inc., to resolve antitrust concerns stemming from the companies' acquisition of funeral homes in Barnstable County.

Pursuant to the consent decree, Loewen is required to divest itself of the assets of three Barnstable County funeral homes within 30 months of the entry of the decree. Additionally, Loewen has agreed to contribute $15,000 over the next two years to charitable organizations serving the needs of elderly and low-income residents of Barnstable County, and $20,000 towards the Commonwealth's costs in this matter.

In the Matter of Cape Ann & Northeast Health Systems, Inc.

On June 20, 1994, the Division entered into an assurance of discontinuance that resolved antitrust concerns regarding the proposed merger between Beverly Hospital and Addison-Gilbert Hospital.

Beverly Hospital is the closest competitive alternative provider of hospital services to Addison-Gilbert Hospital, located on the Cape Ann peninsula. There was concern that elimination, through the merger, of this competitive alternative might open the way for price increases at Addison-Gilbert. To address these concerns, the hospitals have agreed not to raise charges for services at Addison-Gilbert to a level higher than those charged at Beverly Hospital. The agreement is in effect for five years.

Multistate Insurance Antitrust Litigation

In this litigation, the Commonwealth and 19 other states sued leading domestic and foreign insurers, reinsurers and others for antitrust violations. The complaints allege that the defendants engaged in an illegal boycott to remove certain forms of commercial general liability ("CGL") insurance from the market. CGL insurance covers third party property and personal injury claims. In 1989, the U.S. District Court for the Northern District of California dismissed the complaints for failure to state a claim upon which relief could be granted, and in 1991 the Ninth Circuit Court of Appeals reversed the dismissal. In a 5 to 4 vote the U.S. Supreme Court substantially affirmed the judgment of the Ninth Circuit and allowed the case to proceed at the District Court level.

In fiscal year 1994, the Division and the other plaintiff states have commenced extensive discovery and been engaged in the review of the voluminous document production in preparation for trial.

AUTOMOBILE

Used Car Lemon Law Cases

Comm. v. Michael Raymond d/b/a M&M Auto Sales, Inc.
Comm. v. Charles Martineau d/b/a Martineau Enterprises
Comm. v. Paul Ray
Comm. v. David Unis
Comm. v. Bernard Joseph & Lyonel Manigat d/b/a Professional Auto Sales
Comm. v. Frank DeCoster
Comm. v. Marjorie Venditti
Comm. v. Michael Raymond
Comm. v. Manco, Industries, Inc. d/b/a Ford Street Motors
Comm. v. Scott Pare
Comm. v. King of Bay Street, Inc.

On February 17, 1994 the Division filed lawsuits charging the following used car dealers with failing to pay arbitration awards pursuant to the Massachusetts Used Car Warranty Law: Michael Raymond, owner and operator of M&M Auto Sales, Inc., located in Tyngsborough; Charles Martineau, owner and operator of Martineau Enterprises, located in Easton; Paul Ray, owner and operator of Paul's Auto Sales, located in Blackstone; and Bernard Joseph and Lyonel Manigat who owned and operated Professional Auto Sales, in Hyde Park Ave., Boston. The complaints seek to enforce the arbitrators' awards and to restrain the defendants from failing to comply with the provisions of the "Used Car Lemon Law" in the future.

On March 23, 1994, the Division filed suit against Frank DeCoster, who owned and operated Pulaski Boulevard Auto Sales, located in Bellingham, for failing to abide by an arbitrator's

order to repurchase a vehicle from a Massachusetts consumer for $6,712.

On April 6, 1994, a consent judgment was filed in Suffolk Superior Court with Michael Raymond, who owned and operated M&M Auto Sales, Inc., located in Lowell. The consent judgment enjoins Mr. Raymond from failing to comply with the "Used Car Lemon Law" in the future and requires him to pay $250 in civil penalties and $500 in restitution to the harmed consumer.

Also on April 6, 1994, the Division collected $1,000 in penalties against Marjorie Venditti, the owner and operator of Mystic Auto Wholesale, located in Somerville. Venditti paid the $1,000 in civil penalties towards a default judgment which was entered in Middlesex Superior Court on April 8, 1993.

On April 28, 1994, the Division filed a consent judgment in Plymouth Superior Court with Manco Industries, Inc., d/b/a Ford Street Motors, located in Brockton, and its treasurer, Thomas Mann. The consent judgment enjoins Manco Industries, Inc. and Mann from failing to comply with the Used Car Lemon Law in the future, and requires them to pay $350 in civil penalties and $1,400 in restitution to harmed consumers.

On May 17, 1994, the Division filed a lawsuit in Suffolk Superior Court against Scott Pare, a Boston-based car dealer. Pare sold a car to an individual in April of 1993. When the car turned out to be a "lemon," an arbitrator ordered the defendant to repurchase the vehicle in September of 1993. The complaint seeks to enforce the arbitrator's award and restrain the defendant from failing to comply with the provisions of the Used Car Lemon Law in the future.

On May 31, 1994, the Division resolved two lawsuits with used car dealers who failed to pay arbitration awards as required in the state's used car "lemon law."

A consent judgment was filed in Hampden Superior Court with the King of Bay Street, Inc., Springfield. The consumer bought a car in May of 1993 from the defendant which was a "lemon." The judgment requires the King of Bay Street, which is owned and operated by David LaGuercia, to comply with an arbitrator's decision and repurchase the consumers car for $3,069. The judgment prohibits the dealership from failing to comply with the Used Car Lemon Law in the future.

In the other unrelated case, a consent judgment was filed in Suffolk Superior Court with David Unis, who owned and operated the Private Party Used Car Company, in East Boston. The victim in this case brought a car in October of 1991 which turned out to be a "lemon." Unis was ordered to repurchase the car for $2,600. The judgment requires Unis to pay $150 in civil penalties, pay to repurchase the car, and prohibits him from violating the Used Car Lemon Law in the future.

Unfair and Deceptive Automobile Practices

Comm. v. Midway Nissan Jeep-Eagle & Isuzu, Inc.

On September 27, 1993, the Division obtained a consent judgment ordering Midway Nissan Jeep-Eagle & Isuzu, Inc., of Framingham, to pay $3,500 in civil penalties and costs for false advertising earlier in 1993 and ordering future compliance with the Massachusetts Consumer Protection Act.

Midway advertised 'sale prices' next to each description of vehicles for sale. The alleged 'sale prices' were printed in large numerals with an 'asterisk' next to each price. The corresponding asterisk and description disclosed, in extremely small print, that the 'sale price' actually included a $2,000 downpayment.

Comm. v. Visone Motors, Inc., et al.

On November 30, 1993, the Division entered into a consent judgment with Visone Motors, Inc., of Saugus, and other defendants that required the defendants to pay more than a half-million dollars in restitution to consumers, penalties, and costs. In its complaint, the Division alleged that Visone Motors misled consumers regarding whether they were buying or leasing a vehicle; misrepresented that vehicles had been prepped prior to delivery, when the vehicles were in poor condition; failed to repair vehicles and honor warranties; and aggressively repossessed vehicles from consumers who withheld payments because of complaints about the condition of the vehicles.

Under the consent judgment, Visone is required to offer a fair and reasonable settlement to each of the approximately 150 consumers who have complained to the Attorney General's office. If settlement is not reached, then a neutral third party selected by the Attorney General will review the consumers' complaints and propose a resolution that Visone Motors is obliged to implement. The consent judgment also requires Visone Motors to make $450,000 in other payments. These include $230,000 in civil penalties, $40,000 to the Local Consumer Aid Fund and $180,000 for the purchase of 12 new vans to be donated to the Massachusetts Association of Councils on Aging.

Comm. v. Sunshine Daily Rentals Inc., et al.

On November 29, 1993 the Division filed suit in Suffolk Superior Court against William E. Broadbent, who is doing business as Sunshine Daily Rental, Inc. and Statewide Leasing, Inc.; Sunshine Daily Rentals, Inc.; The Auto Group, Ltd.; Auto Rent-Auto Lease of New England, Inc.; and Statewide Leasing, Inc., for allegedly violating the Commonwealth's consumer protection laws in the rental, leasing and sale of motor vehicles.

The Commonwealth alleged that the defendants violated numerous consumer protection regulations by misrepresenting the daily rental rate of rental motor vehicles; imposing undisclosed additional charges for rental motor vehicles; charging consumers for nonexistent damage to rental motor vehicles; making inappropriate charges to consumers' credit cards; misrepresenting the condition of motor vehicles for lease and sale; and engaging in as variety of additional unfair and deceptive business practices. Approximately 123 victims have alleged over $65,000 in monetary damages.

Comm. v. M.J.C. Enterprises d/b/a Grand Prix Auto Sales

On February 8, 1994, the Division filed suit against M.J.C. Enterprises d/b/a Grand Prix Auto Sales, and Grand Prix's owner and president, Mark Colangelo. The Commonwealth alleged that the defendants misled consumers about the mechanical fitness of cars to be sold; mislead consumers about the title status and ownership history of the cars to be sold; failed to deliver the car's title to the purchaser on the day the car was delivered; misled consumers about the length of time it would take to perform repairs on cars; and charged customers for repairs which had not actually been performed.

Comm. v. Robert Spigel d/b/a The Car Palace

Also on February 8, 1994, the Division filed suit against Robert Spigel d/b/a Car Palace, located in Seekonk. The Commonwealth alleged Spigel violated the Massachusetts Consumer Protection Act by misrepresenting to consumers the repair history of automobiles, failing to disclose to consumers the status of automobiles as salvaged vehicles and failing to make a number of required disclosures in the purchase and sale agreements used by the dealership. The Commonwealth seeks restitution for affected consumers, injunctive relief and civil penalties.

Comm. v. Guaranteed Auto Credit, Inc.

On April 1, 1994, the Division filed a $93,000 consent judgment in Suffolk Superior Court against Guaranteed Auto Credit, Inc., located in North Attleboro, and its owner and president, Charles LaBonte. The Commonwealth alleged that the defendants used unfair and deceptive practices in the advertising and leasing of automobiles to low-income consumers. The Commonwealth alleged that Guaranteed violated the Massachusetts Consumer Protection Act and the Attorney General's Debt Collection regulations in the collection of leasing debts from consumers.

The consent judgment enjoins Guaranteed and LaBonte from employing unfair or deceptive practices in the advertising and leasing of automobiles and in the collection of debts from consumers. It also requires the payment of approximately $18,000 in restitution to consumers with outstanding complaints against Guaranteed, $25,000 to the Local Consumer Aid Fund and $50,000 in penalties to the Commonwealth.

Comm. v. South Shore Volvo

On April 8, 1994, the Division entered into a consent judgment with South Shore Volvo for allegedly using misleading automobile advertisements. The consent decree enjoins the defendant from advertising a warranty as free when consumers must pay more for a vehicle if they opt for the warranty, advertising prices for vehicles that do not include document preparation charges, and failing to clearly disclose that consumers must pay an additional amount to purchase a vehicle at an advertised price. South Shore Volvo was also required to pay $5,000 in civil penalties to the Commonwealth.

Comm. v. Victory Dodge, Inc.

Also on April 8, 1994, the Division entered into a consent judgment with Victory Dodge, Inc., Victory Ford, Inc., and Concord Chrysler-Plymouth, Inc. for allegedly using misleading advertisements in the sale and lease of automobiles. The Commonwealth alleged that the defendants had failed to disclose sale expiration dates; advertised rebates without clearly disclosing that they were available only to a specific class of consumers; failed to clearly disclose that consumers must pay and additional amount to purchase a vehicle at an advertised price; and advertised a monthly lease rate without clearly disclosing that consumers must make a sizable downpayment to obtain that rate. Pursuant to the consent decree, the defendants are enjoined from engaging in the alleged acts and are required to pay $2,500 in civil penalties and $2,500 to the Local Consumer Aid Fund.

Comm. v. Chambers Motorcars

On April 11, 1994, the Division entered into a consent judgment with a Somerville-based automobile dealership which allegedly engaged in deceptive advertising. Chambers Motorcars allegedly placed an advertisement in the 1993-94 NYNEX Yellow Pages that falsely stated the dealership was "Greater Boston's only Authorized Saab Dealer." Under the terms of the consent judgment, which was filed in Middlesex Superior Court, Chambers is permanently prohibited from making misrepresentations about its dealership in any advertising medium. Chambers also agreed to contribute a $1,500 donation as a corporate sponsor of the SCORE program.

Comm. v. Nissan of Lynnfield, Inc.

On May 24, 1994, the Division filed a consent judgment in Suffolk Superior Court with a Lynnfield car dealer, Nissan of Lynnfield, Inc., involving alleged violations of Massachusetts motor vehicle advertising regulations.

A review of the defendant's advertisements indicated that Nissan of Lynnfield, Inc. had allegedly advertised specific low prices for certain vehicles, only to disclaim the low price elsewhere in the advertisement by indicating that additional cash or a trade-in vehicle was necessary in order for a consumer to get the stated price. In addition, Nissan of Lynnfield, Inc.

allegedly advertised that some vehicles were sold "loaded," without indicating the actual options available with the vehicle, and failed to clearly and conspicuously disclose that certain vehicles offered for sale were former lease or daily rental vehicles. Under the terms of the agreement, Nissan of Lynnfield, Inc. has agreed to change its advertising to comply with applicable regulations, and to pay a civil penalty of $5,000.

Commonwealth v. Advantage Toyota, Inc.

On May 27, 1994, the Division obtained a consent judgment with Advantage Toyota, Inc., a Weymouth dealership, that enjoined the dealership from engaging in future misleading advertising and required the payment of a civil penalty of $2,500. The Commonwealth alleged that the defendant's ads misled consumers by featuring specific cars and promising "no down payment," while disclaiming elsewhere that the offer excluded advertised vehicles, and advertising prices that were only available if consumers traded in vehicles worth thousands of dollars.

Comm. v. James Kasilowski

On June 1, 1994, the Division entered into a consent judgment with James Kasilowski of Pepperell, formerly the president of Auto Adoption, an auto-brokering business formerly located in Tyngsborough. Kasilowski allegedly solicited consumers who had difficulty making car payments and claimed he could find someone for them to "take over" the payments and eventually buy the car from them. Kasilowski allegedly failed to inform banks and financing companies of the proposed changes in ownership in violation of the contract between the bank or financing company and the consumer and the state's Consumer Protection Act. Consumers were unable to register or insure the cars they paid for because the banks were not aware of the proposed changes of ownership.

Pursuant to the consent judgment filed in Suffolk Superior Court, Kasilowski agreed to provide restitution to consumers, not to broker cars in the future and to pay a $1,000 civil penalty.

Comm v. Smyly Autos, Inc.

On June 29, 1994, the Division obtained a consent judgment in Middlesex Superior Court with Smyly Autos, Inc., a Malden car dealer, for placing allegedly misleading advertisements. The alleged advertising violations included ads which misled consumers into believing that they could lease a vehicle for a particular monthly rate, when they actually had to make considerable downpayments in order to get the advertised monthly lease rate and advertised car sale prices which were only available to consumers if they paid thousands of dollars in cash or traded in a vehicle.

The consent judgment enjoins Smyly Autos, Inc. from engaging in future misleading advertising and requires the payment of $2,500 in civil penalties. The owner of Smyly Autos, Inc. is also required to pay $2,500 to the Local Consumer Aid Fund.

CREDIT AND DEBT COLLECTION

In the Matter of Bose Corporation

On July 29, 1993, the Division filed an assurance of discontinuance with Bose Corporation that provides refunds to more than 5,000 consumers nationwide who had unauthorized charges levied on their credit card accounts for merchandise they never ordered. Under the terms of the settlement filed in Suffolk Superior Court, in addition to the consumer refunds, Bose paid $35,000 to help fund the Local Consumer Aid Fund.

In the Matter of Payco American Corporation

On December 22, 1993, the Division filed an assurance of discontinuance in Suffolk County Superior Court in which a national debt collection company agreed to abide by state debt collection regulations and pay $200,000 in connection with alleged prior violations.

The Attorney General's Office had received complaints charging that Payco-General American Credits, Inc., National Account Systems, Inc., National Account Systems, Inc. d/b/a American Credit & Collection, and National Account Systems, Inc. d/b/a Payco-General American Credits, all subsidiaries of Payco American Corporation of Brookfield, Wisconsin, with a local office in Hingham, violated state debt collection regulations by telling third parties -- including employers, neighbors, and family members -- about consumers' debt; calling consumers more times than the law allows; requesting or demanding that consumers send post-dated checks; and using intimidating language to harass consumers.

Pursuant to the assurance, Payco agreed to refrain from engaging in unfair debt collection practices in the future. The $200,000 was paid to the Local Consumer Aid Fund and to the Commonwealth as costs.

In the Matter of Equifax Credit Information Services, Inc.

On December 23, 1993, the Division filed an assurance of discontinuance in Suffolk Superior Court entered into by Equifax Credit Information Services, Inc., arising out of allegations that the company erroneously listed property tax liens in the credit files of thousands of Massachusetts residents. The company agreed to pay a minimum of $240,000 in restitution to injured consumers and payments to the state.

The Commonwealth alleged that between January, 1991 and April, 1992, Equifax, one of the three largest credit reporting agencies in the country, mistook "Municipal Lien Certificates" recorded at local registries of deeds offices for conventional liens.

Equifax then characterized the Municipal Lien Certificate as a "lien" in consumers' credit files, and disseminated credit reports containing the misleading information for thousands of consumers.

Under the terms of the settlement, the nearly 1,200 consumers who were most likely harmed by the lien information in their credit reports will receive an offer of compensation. Equifax stopped including Municipal Lien information in its credit files in April, 1992, and has agreed as part of the settlement not to include Municipal Lien Certificate information in its regular credit reports in the future.

Comm. v. Milliken & Michaels, Inc.

On January 14, 1994, the Division filed a consent judgment in Suffolk Superior Court with a Louisiana-based debt collection agency that was unlicensed to do business in Massachusetts. The complaint alleges that Milliken & Michaels was engaging in debt collection activity in Massachusetts without having obtained a license to do so, and without having posted a bond as required by the Massachusetts Commissioner of Banks.

Under the terms of the consent judgment, Milliken & Michaels must cease its debt collection efforts in Massachusetts until it obtains the necessary license and posts an adequate bond, and paid a $10,000 civil penalty to the Commonwealth.

FINANCIAL

Comm v. Thomas J. Spencer

On August 18, 1993, the Division filed a civil suit in Suffolk Superior Court, prohibiting Thomas F. Spencer, Jr., a Melrose attorney, from further serving as a closing attorney in residential mortgage loan transactions. At the same time the Division obtained an assented to preliminary injunction, whereby Spencer agreed to refrain from further engaging in dealings as an attorney handling residential mortgage loan transactions. In residential mortgage loan closings, lenders gave Spencer new loan proceeds with the expectation that he would use the proceeds to pay off existing mortgages and other obligations. Spencer, however, allegedly failed to properly apply funds in at least 20 consumer transactions, and allegedly kept approximately $1,700,000 for his own use.

Security Title and Guaranty Company, the title insurance company that issued policies of title insurance in all of the transactions, paid off most of the first mortgage holders and other obligors whom Spencer allegedly should have paid.

Comm. v. First Investors Corp., et al.

On October 13, 1993, the Division, in cooperation with the Massachusetts Secretary of State's Office filed a consent judgment in Suffolk Superior Court in settlement of the Commonwealth's lawsuit against First Investors Corporation, a

Wall Street securities firm, and its principals. The settlement provided $32.2 million nationwide to consumers and mandated significant changes in the way the company does business.

Suit was filed against First Investors in September, 1991, for alleged violations of the Massachusetts Consumer Protection Act and the state Securities Act. The Commonwealth's complaint alleged that First Investors' salespersons deliberately misled customers into believing that two junk bond mutual funds sold by First Investors, First Investors Fund for Income and First Investors High Yield Fund, were as safe as certificates of deposits (CDs) and involved little or no risk.

Under the settlement, First Investors will pay $32.2 million into a fund from which eligible consumers nationwide will receive compensation. In addition, the four principals of the firm will be barred from the securities business in Massachusetts for a period of two years. First Investors will also pay $100,000 to a consumer education fund to prevent future harm to consumers created by fraudulent sales and marketing practices.

Comm. v. Senior Financial Services, Inc., et al.

On November 2, 1993, the Division filed suit in Suffolk Superior Court against a Pittsfield corporation, a Pittsfield salesperson and a South Carolina resident who market "personalized living trusts" for the use of Massachusetts consumers. The suit alleged that Senior Financial Services, Inc.; John Ben Merchant of Pittsfield; and Richard Anthony of South Carolina, doing business as "Anthony Associates," offered a package of documents, including among them a living trust, powers of attorney, wills and health care proxies to Massachusetts consumers as estate planning devices. These documents have allegedly serious legal consequences, and neither Merchant nor Anthony had any formal legal training.

The complaint requests that the defendants be enjoined from continuing their present sales tactics, and requests restitution for Massachusetts consumers.

Comm. v. Via Brazil of Boston, Inc., et al.

On March 15, 1994, the Division obtained a consent judgment against Via Brazil of Boston, Inc. and Via Brazil, Inc., of Florida, after they allegedly failed to transmit funds to foreign countries on behalf of customers.

The consent judgment filed in Suffolk Superior Court, permanently prohibits the defendants from accepting money from customers for transmission to foreign countries. Via Brazil must also pay $4,985 in restitution to customers who did not receive refunds and $3,000 in civil penalties.

Comm. v. Richard North, et al.

On April 29, 1994, the Division filed suit and obtained a temporary restraining order against Richard D. North, a Duxbury investment advisor and North Asset Management, of Boston. The temporary restraining order was extended to a preliminary injunction on May 17, 1994 and enjoins both defendants from engaging in the provision of financial services to the public and from concealing or removing assets from the Commonwealth.

The Commonwealth's complaint alleged that North, individually and in his capacity as an officer and director of the company, solicited and received over $450,000 from consumers purportedly for the purpose of investing the money. Some or all investments were allegedly never made and the funds were dissipated by the defendants.

HEALTH AND MEDICAL ISSUES

Comm. v. Julian Porter d/b/a Porter House

On August 11, 1993, the Division obtained a consent judgment with Julian Porter, the former operator of Porter House, an unlicensed nursing home, located in Newton. The judgment prohibits Porter from running an unlicensed nursing home; from neglecting elderly, infirm or disabled patients; and from misrepresenting the type of personal or health care services offered to individuals for a fee. It also required Porter to pay $10,000 in civil penalties and $25,000 in monetary damages.

Comm. v. U.S. Health, Inc., et al.

On October 6, 1993, the Division filed a complaint for contempt in Suffolk Superior Court against the corporations that operate the Holiday Health spas in Massachusetts, including Holiday Universal, Inc., and Bally's Health and Tennis Corporation. The suit alleged that Holiday committed civil contempt by violating the terms of a 1989 consent judgment against the companies, and requested that the Court permanently prohibit the companies from operating in Massachusetts as a habitual violator of the Commonwealth's Consumer Protection Act. The Complaint further seeks that the companies provide restitution to injured consumers and that the court impose penalties against the companies.

In the Matter of Meadowbrook Nursing Home of Canton

On February 17, 1994, the Division entered into an assurance of discontinuance whereby Meadowbrook Nursing Home of Canton will pay back $22,000 to individuals who had agreed to pay private nursing care rates in order to get a Medicaid-eligible relative admitted to the home.

The Commonwealth alleged that the defendant had refused to admit several Medicaid residents until a relative agreed to pay the rates charged to private residents for up to six months. At least four people, anxious to have their relative admitted to Meadowbrook, a new facility, had signed admission contracts which

effectively gave up the patient's right to receive Medicaid coverage for a substantial period of time. It is unlawful for a nursing home to require patients to waive any of their Medicaid rights.

The assurance of discontinuance requires the repayment of approximately $22,000 in restitution to the two people who paid privately for the care of a relative who was a Medicaid beneficiary and the payment of a civil penalty of $5,000.

Comm. v. Centro de Nutricion y Terapias Naturales, Inc., et al.

On March 16, 1994, the Division sued and obtained an assented-to preliminary injunction against Centro de Nutricion y Terapias Naturales, Inc., and Alcibiades Acosta, prohibiting them, or their employees, from engaging in the unauthorized practice of medicine and from advertising that they can cure, treat or prevent any medical disease or condition. Centro de Nutricion y Terapias Naturales, Inc. operates in storefronts located in Boston and Lawrence. Each storefront offers vitamins, herbs and other products advertised by the Centro as "medical remedies." These storefront locations also contain examining rooms where Acosta and other self-proclaimed doctors examined and treated patients for various ailments.

In the Matter of Miles, Inc.

On April 4, 1994, the Division, along with ten other states entered into an assurance of discontinuance with Miles, Inc., a major pharmaceutical company, that prevents the company from resuming payments to pharmacists for switching patients to its hypertension drug and requires Miles to pay $605,000 ($55,000 per state) to 11 states for consumer education.

In June, 1993, Miles offered to pay pharmacists nationwide for switching consumers who were using its sole competitor's medication to Miles' new prescription drug, Adalat CC, for the treatment of hypertension. Before stopping the payment program in November, 1993, Miles paid over $358,415 to participating pharmacies in 11 states for consumers switched to its drug. Miles did not disclose these payments to consumers or require participating pharmacists to tell consumers about the payments.

Under the settlement reached with the 11 states, Miles, Inc. is barred from ever resuming the program or any similar one involving payments to pharmacists, agrees to comply with a federal anti-kickback law, and will report to the States to ensure compliance.

In the Matter of Dahlberg, Inc.

On April 6, 1994, the Commonwealth and 35 other states entered into an assurance of discontinuance with Dahlberg, Inc., a Minnesota corporation, concerning its advertising for Dahlberg's Miracle Ear hearing aids and Clarifier circuits. In its advertisements for its hearing aids, Dahlberg represented that its hearing aids could eliminate unwanted background noise,

allowing hearing aid users to understand and enjoy conversation, even in crowded and noisy environments. The Attorneys General allege that these advertisements were false and misleading, since no hearing aid can "focus" on sounds an individual wants to hear or eliminate background noise.

Under the settlement, Dahlberg must disclose in future advertising that hearing aids may not provide the same benefits to most or all users, and that the overall benefit provided by hearing aids may depend on proper fit, degree or severity of hearing loss, and accuracy of patient evaluation. In advertisements featuring the Clarifier, the company must also disclose that the Clarifier is an option and that understanding speech may still be difficult in noisy settings. The settlement also requires Dahlberg to pay $700,000 in costs to the states.

In the Matter of Olde Sturbridge Country Farms

On April 8, 1994, the Division filed an assurance of discontinuance with Olde Sturbridge Country Farms, a Warren egg producer, requiring the defendant to stop making unsubstantiated claims about the fat content of its eggs. In addition, Olde Sturbridge agreed to pay $2,500 to the Local Consumer Aid Fund.

Comm. v. University Hospital, et al.

On April 12, 1994, the Division filed a consent judgment reached with University Hospital (an affiliate of Boston University Medical Center) regarding alleged unfair practices in the recruiting of patients with spinal cord injuries for experimental surgery. The consent judgment requires the Hospital to pay up to $1.5 million in restitution to the patients and in payments to the state.

Contemporaneous with the filing of the consent judgment, the Attorney General also filed a complaint in Suffolk Superior Court against Dr. Harry S. Goldsmith. The complaint alleges that the Hospital and Dr. Goldsmith worked with a Texas resident, Barbara A. Devine, to assist in the screening and selection of patients for the experimental surgery. Devine allegedly made numerous misrepresentations to patients with spinal cord injuries, including exaggerating the results that patients could expect to gain from surgery, and misleading individual patients to believe they were uniquely qualified to benefit from the surgery.

Under the terms of the consent judgment, the Hospital is required to offer to return to the 26 patients who had the surgery, all of their medical expenses, estimated to be up to $45,000 per patient, and an additional $5,000 per patient for related expenses. The Hospital is also required to pay $250,000 to the Commonwealth.

The litigation is continuing against Dr. Goldsmith.

In the Matter of Super Fitness, Inc., et al.

On May 15, 1994, Super Fitness, a health club with locations in Quincy and Watertown, entered into an assurance of discontinuance with the Division involving alleged misrepresentations of the scheduled opening date of the Watertown facility, and other complaints. The Commonwealth alleged that Super Fitness employees made misrepresentations regarding the date that the Watertown facility would open, and regarding services to be offered at that site. In addition, Super Fitness allegedly misrepresented that certain pre-opening discount memberships were available on a limited basis.

Under the terms of the agreement, Super Fitness has obtained the bond required of health club facilities in the Commonwealth, and will make all required disclosures in the future. Super Fitness will offer refunds to consumers who were harmed by the failure of the facility to open. In addition, Super Fitness will pay $25,000 to the Commonwealth in civil penalties for the alleged violations of law.

HOME IMPROVEMENT AND MORTGAGE

Advanced Financial Services Agreement

On August 26, 1993, the Division reached a home improvement loan settlement worth approximately $100,000 to Massachusetts consumers with Advanced Financial Services, Inc., a Rhode Island mortgage lender. The agreement resolves claims regarding the company's potential liability for home improvements arranged by Carefree Building Products, Inc., and its principal, David Haigh. The Division had previously sued Carefree and Haigh for consumer protection violations in the selling of home improvement services to Massachusetts consumers.

Under the terms of the settlement, some consumers whose Carefree home improvement loans were financed by Advanced Financial Services may be eligible for cash refunds and loan adjustments, including payments to repair incomplete or shoddy home improvement work, refunds equal to one-half of the total closing points charged to each borrowers, and additional lump sum cash payments. Consumers may also be eligible for loan rewrites at lower interest rates and adjusted monthly payment schedules.

Comm. v. U.S. Mortgage Service Corp.

On October 27, 1993, the Division obtained a consent judgment in Suffolk Superior Court against U.S. Mortgage Service Corporation (USMSC), a Pennsylvania corporation which markets a product called the Early Mortgage Retirement program. The Early Mortgage Retirement program provides a structure for consumers to convert monthly mortgages to biweekly mortgages for a substantial fee. In a complaint filed simultaneously with the consent judgment, the Commonwealth alleged that USMSC used sales kits which contained false and misleading scripts used by telemarketers. The scripts allegedly included misleading statements that the company telemarketer was conducting a survey

or was working in conjunction with either the homeowner's county government or the homeowner's mortgage company. Under the terms of the consent judgment, USMSC is enjoined from making these and other false and misleading statements.

Under the terms of the consent decree, USMSC is required to pay $2,000 in restitution and $2,500 in penalties. USMSC also agreed to change its recruiting practices in order to comply with regulations governing help wanted advertisements.

In the Matter of First Eastern Mortgage Corp.

On November 29, 1993, the Division filed an assurance of discontinuance in Suffolk Superior Court against First Eastern Mortgage Corporation, an Andover-based mortgage company. First Eastern had been using a form of rate-lock agreement to allow consumers to lock-in an interest rate during the home mortgage application process. The Commonwealth alleged the agreement failed to clearly disclose to consumers, prior to the execution of the rate-lock agreement, the exact nature and extent of First Eastern's refund policy.

Pursuant to the Assurance, First Eastern Mortgage Corporation is required to provide approximately $29,000 in refunds to 36 loan applicants in Massachusetts who had executed a rate-lock agreement and paid a fee to lock in an interest rate during the process of an application for a mortgage loan which was ultimately not approved. First Eastern is also required to revise the form of the rate-lock agreement to be used in future transactions.

Comm. v. Earl Pentland

On December 10, 1993 the Division filed a consent judgment in Suffolk Superior Court with Earl Pentland, a Falmouth man who sells home improvement services. Pentland, allegedly made deceptive and misleading representation to consumers in the sale and financing of home improvement services; induced consumers to sign written agreement when he knew that the consumers did not understand the terms of the instrument; and failed to satisfactorily complete home improvement jobs for which he received advance payment. The consent judgment enjoins him from engaging in deceptive practices in the provision of home improvement services and requires him to pay $26,000 in restitution and fines.

Commonwealth v. Thomas Field d/b/a F & D Unlimited Construction of Lowell

Comm. Kevin DiMario d/b/a K.D. Specialized Contracting, Inc.

Comm. v. William Oats d/b/a New Englander Architectural Products Corp.

Comm. v. Robert Presti

On January 5, 1994, the Division filed separate lawsuits against four home improvement contractors who allegedly failed to register with the state's Bureau of Building Regulations and Standards, as required by the 1992 law regulating home improvement contractors.

The four contractors sued were: Thomas Field d/b/a F & D Unlimited Construction of Lowell; Kevin DiMario, d/b/a K.D. Specialized Contracting, Inc., of Lawrence; William Oats, who has done business as New Englander Architectural Products Corp., of Holliston, New Englander Factory Direct of Shrewsbury, and New Englander Home Remodeling of Shrewsbury; and Robert Presti, who has done Business as International Kitchens of Lexington, the International Kitchen Inc., of Burlington and Studio One Kitchens of Woburn.

On March 3, 1994, the Division filed a consent judgment with Thomas Field. The judgment required Field to register as a home improvement contractor and to pay a $100 civil penalty.

On March 7, 1994, the Division filed a consent judgment with Kevin DiMario, requiring DiMario to register as a home improvement contractor and to pay a $100 civil penalty.

On March 16, 1994, the Division filed a consent judgment with William Oates, requiring Oates to register as a home improvement contractor and to pay a civil penalty of $5,000.

NationsCredit Financial Services Corporation Agreement

On January 28, 1994, the Division reached a home improvement loan settlement with NationsCredit Financial Services Corporation Company, a Pennsylvania mortgage lender. The agreement resolves claims regarding the company's potential liability for home improvements arranged by Carefree Building Products, of Boston, and its principal, David Haigh, of Scituate.

Under the terms of the settlement, consumers whose Carefree home improvement loans were sold to other lenders and were eventually purchased by NationsCredit will receive reductions in their loan principals by the amount of overcharges in their home improvement work as well as a credit for the costs of repairing shoddy home improvement work. Also, the terms of the loans will be rewritten to provide for an eight percent interest rate from the start of the original loan and consumers will also be eligible for $500 payments and other favorable adjustments to loan terms.

Dime Savings Bank Agreement

On March 22, 1994, the Commonwealth reached a settlement with the Dime Savings Bank of New York, under which Dime will offer to modify or restructure the loans of thousands of Massachusetts residents who obtained mortgages from the bank in the late 1980's. Dime will also offer a $6 million new loan program to

the hundreds of individuals in Massachusetts who have been foreclosed by Dime and will forgive all outstanding indebtedness on foreclosed loans.

Under the terms of the agreement, Dime will offer relief to borrowers who obtained a Dime mortgage for the purchase of a primary residence. Dime will offer to modify the negative amortization loans of all borrowers to either positively amortizing adjustable rate mortgages or fixed rate loans, depending on the choice and financial circumstances of the borrower. For borrowers seriously in default, Dime will attempt to achieve a "work out" with the borrower, either by refinancing to longer term fixed rate mortgages or by writing off some or all of the unpaid interest which has accumulated, or by other alternative means. Borrowers who have already been foreclosed will be released from any outstanding deficiency by Dime and will be offered the opportunity to participate in a $6 million new loan program. Dime has also agreed not to market any new residential loans in Massachusetts without prior notice to the Attorney General of the exact terms and marketing plans for those mortgages.

Comm. v. Mastalerz d/b/a Bay State Bathtub Liners

Also on March 22, 1994, the Division filed a civil contempt action in Suffolk Superior Court against a former bathtub liner salesman for failing to pay restitution to Massachusetts consumers under the terms of a consent judgment approved on August 18, 1993.

The Attorney General's office had obtained a consent judgment requiring Ronald J. Mastalerz, of Boston, to pay $7,855 in restitution to consumers by September 30, 1993, for failure to deliver bathtub liners which they had purchased or refund their money. Mastalerz, who did business as Bay State Bathtub Liners, Inc., in Woburn, had received deposits from 30 consumers.

In addition to making restitution to consumers, Mastalerz was required to pay $2,500 in civil penalties. The Attorney General is now seeking a $10,000 penalty for each violation of the court order.

Comm. v. Carefree Building Products Inc., et al.

On April 29, 1994, the Division filed a consent judgment in Suffolk Superior Court with James Kendrick, a Revere man who is in the business of selling and providing home improvement services. Kendrick and his co-defendant in this action, David Haigh, of Scituate, allegedly violated the Consumer Protection Act by making deceptive and misleading representations to consumers in the sale and financing of home improvement services; inducing consumers to sign written agreements when they knew that the consumer did not understand the terms of the instrument; overcharging consumers unconscionable amounts for home improvement services and falsifying financial information on loan applications to lenders.

Under the terms of the consent judgment, Kendrick is permanently enjoined from misrepresenting material facts and failing to disclose material facts to consumers in the sale and financing of home improvement services.

Comm. v. Bowen d/b/a/ Bowen Construction Co., et al.

On June 22, 1994, the Division filed a consent judgment against Peter Ingraldi, aka Peter Bowen, a Scituate home improvement contractor who allegedly overcharged elderly consumers for shoddy and incomplete work. In settlement of the case, Ingraldi agreed to pay $10,000 in restitution to seven consumers. In addition, he agreed to refrain from misrepresenting material facts from consumers in the sale and financing of home improvement services. He also agreed to provide each elderly consumer with a one-page consumer rights bulletin.

LEAD PAINT

Comm v. Daniel C. Robinson d/b/a Deluxe Deleading, et al.

On July 14, 1993 the Division filed a consent judgment in Suffolk Superior Court requiring Daniel C. Robinson, a Framingham deleading contractor, to provide 100 hours of community service in Lowell and enjoining him from further lead abatement violations. Robinson allegedly violated the Massachusetts lead laws in connection with the abatement and inspection of two apartment buildings in Lowell.

On Nov. 9, 1993, the Division also filed a final consent judgment in Suffolk Superior Court, banning Tiger Home Inspection, Inc., from doing lead abatement inspections in the Commonwealth. Tiger issued the letters of compliance for the two Lowell properties deleaded by Robinson. Pursuant to the consent judgment, Tiger is permanently enjoined from conducting lead abatement inspections in Massachusetts. In addition, Tiger donated $17,500 to a program to be administered through Roxbury Community College, which is designed to enhance the training of lead abatement contractors and lead abatement inspectors.

Comm. v. American Lead Abatement, Inc., et al.

On May 3, 1994, the Division filed suit in Suffolk Superior Court against American Lead Abatement, Inc., of Centerville, a deleading contractor; Douglas L. Williams, Sr., of Marston Mills, in charge of lead abatement for the company; and James C. Judge, of Kingston, a lead inspector.

In two instances, consumers that contracted with American Lead Abatement to do abatement work also agreed to pay for hazardous lead waste disposal under their contracts. At the end of each job, Williams allegedly requested exorbitant fees for hazardous lead waste disposal, in one case 22 times the amount estimated in the contract. When consumers refused to pay, Williams allegedly returned 55-gallon drums filled with hazardous lead waste back to

consumers. Judge did the initial lead paint inspection of the property and issued letters of lead abatement compliance for the property. Subsequent inspections allegedly revealed that Judge had missed a number of surfaces that required lead abatement during the initial inspection and had improperly certified the house.

The Commonwealth's complaint seeks an injunction that would prohibit Williams from proving deleading services to the public for a period of at least three years and prohibits Judge from providing lead paint inspections for a period of at least three years. The Commonwealth is also seeking restitution for consumers injured by the allegedly deceptive acts of the defendants, penalties and costs of investigation

Comm. v. Kevin French

On June 2, 1994, the Division filed a consent judgment in Suffolk Superior Court with Kevin French, a lead paint inspector who allegedly violated the Massachusetts lead paint laws by issuing letters of compliance in early 1991 for two contaminated residential properties in Salem.

The consent judgment requires French to pay $1,000 in civil penalties and prohibits him from violating the state lead paint laws in the future. The judgment further requires French to retake and pass the state lead paint training program and written exam. Any violation of the judgment will result in a lifetime ban from the lead paint abatement industry

LIQUIDATION AND GOING OUT OF BUSINESS SALES

In the Matter of Gordon Brother Partners, Inc., et al.

On December 28, 1993, the Division filed an assurance of discontinuance in Suffolk Superior Court with Gordon Brothers Partners, Inc., and/or Cotton Kidz, Inc., a jewelry and merchandise retailer/liquidator and its agent.

The defendants ran close-out sales and other promotions in which they advertised that goods had been obtained from a well-known retailer and were now substantially reduced in price. The Attorney General alleged that in some cases, goods from other sources were mixed in, diluting the well-known retailers' goods, without clear disclosure of this inventory dilution of consumers. In other cases, price tags were affixed or altered, reflecting a higher than true regular price, and the marked price was immediately discounted, creating the impression of more significant savings than was the case.

Under the terms of the settlement, the defendants agreed to comply with Massachusetts law and the Attorney General's regulations in the future. As part of the agreement, Gordon Brothers agreed to pay $25,000, and Cotton Kidz agreed to pay $150,000, which will be contributed to various state consumer and violence prevention programs and greater Boston Legal Services.

In the Matter of Designer Clothing Ltd. d/b/a Ralph's Liquidation Center

On March 31, 1994, the Division filed an assurance of discontinuance in Suffolk Superior Court entered into with Ralph's Liquidation Center in Woburn. The assurance resolved the Commonwealth's concerns about an allegedly illegal "going out of business" sale by Ralph's Liquidation Center, an off-price seller of men's designer suits. The company which owns Ralph's, Designers Clothing Limited, had previously conducted store closing sales at its former locations less than two years earlier, making the recent sale illegal under state law.

Pursuant to the assurance, Ralph's donated 100 designer suits to the New England Shelter for Homeless Veterans in Boston.

Comm. v. J.K. Liquidators, Inc., et al.

On April 25, 1994, the Division filed a lawsuit against Joseph Kessler, Irma Gross and Nancy Guarino, three individuals associated with the defunct Boston Scandals furniture outlets. The complaint alleges the three violated a restraining order and preliminary injunction obtained last year by using J.K. Liquidators, Inc., to illegally bring in additional inventory during their final going-out-of-business sale last fall.

The lawsuit seeks a judgment of civil contempt, civil penalties, costs and attorneys' fees against the defendants.

TRAVEL CASES

Comm. v. Admiral's Cruise Center, Inc.

On August 13, 1993, the Division filed suit against Admiral's Cruise Center, Inc., a Stoneham travel agency that failed to supply cruise vacation packages to dozens of Massachusetts consumer who paid for the vacations. The Division and the Stoneham Police received several consumer complaints on August 11 and 12, 1993, indicating that numerous consumers had been bilked of their money after the travel agency closed its doors. The agency claimed a lack of funds kept it from continuing operations.

Comm. v. New Horizons, Inc., et al.

On Feb. 18, 1994, the Division reached a settlement with New Horizons, Inc., a Watertown non-profit travel company that provided vacation packages for individuals with disabilities. New Horizons had been providing vacation packages to consumers for over 10 years. In September, 1993, the company allegedly began canceling vacations that consumers had paid for, and failed to provide refunds.

Under the consent judgment, New Horizons, Inc. and Stanley M. Jacobs, Executive Director, have agreed to permanently refrain from providing travel arrangement services to the public and will pay a minimum of $11,995 in restitution to affected consumers

Comm. v. Milestone Educational Institute Inc., et al.

On May 23, 1994, the Division obtained a default judgment against Christopher DuMello Kenyon, owner of the defunct student travel company Milestone Educational Institute, Inc. The judgment entered in Middlesex Superior Court holds Kenyon liable to 4500 injured consumers across the country for a total of $7,761,047.00. The judgment also prohibits Kenyon from ever returning to Massachusetts to do business, and from ever soliciting Massachusetts residents as customers.

Comm. v. Anthony Belli d/b/a Centennial Travel and Tony's Casino Tours

On May 27, 1994, the Division filed a lawsuit against Anthony Belli Sr., a North Shore tour operator for allegedly canceling hundreds of trips and refusing to return more than $20,000 to consumers. The suit alleges that Belli, former proprietor of Tony's Casino Tours and Centennial Travel in Danvers and Peabody, sold charter tours to Las Vegas, then abruptly canceled the trips without returning consumers' deposits.

The Commonwealth's complaint seeks an injunction to prevent Belli, who has filed for bankruptcy, from engaging in further consumer fraud and civil penalties.

UNAUTHORIZED PRACTICE OF LAW

Commonwealth v. Leon Aronson

On January 5, 1994, the Division obtained a permanent injunction ordering Leon Aronson, a disbarred Boston attorney to stop his alleged unauthorized practice of law. Additionally, Aronson is permanently enjoined from soliciting or accepting fees for legal services. Though he was disbarred in June, 1993, Aronson allegedly continued to practice law and held himself out as an attorney after his disbarment, misrepresented that he was still authorized to practice law, and failed to disclose to consumers, other attorneys or to the court that he had been disbarred. The Division is pursuing an accounting of monies received for legal work following Aronson's disbarment, restitution for injured consumers, and civil penalties and costs.

In the Matter of Nelly Gutierrez Legalization Services Committee

On January 12, 1994, the Division obtained an assurance of discontinuance from Nelly Gutierrez Legalization Services Committee, an Allston company allegedly engaged in the unauthorized practice of immigration law. In the assurance, Nelly Gutierrez and her Legalization Committee agreed to immediately cease representing people in INS proceedings and promised that Gutierrez would not hold herself out as an attorney or otherwise engage in the practice of law. The defendants were also required to pay $5,000 as restitution to their clients.

GENERAL CASES

Comm. v. Nathan F. Fisher d/b/a Fisher Moving and Storage, et al.

On September 16, 1993, the Division filed suit and obtained a temporary restraining order against Nathan F. Fisher and his moving and storage businesses, Fisher Moving and Storage, Fisher Movers, Inc. and A. Fisher Storage, Inc., all of South Boston. The complaint alleges that the defendants recklessly stored consumers' personal property and sold consumers' property without notifying them of the sale. The temporary restraining order prevents the defendants from further engaging in these acts.

On April 15, 1994, the Division obtained an order in this case that called for the operation of the warehouse by an administrator and allowed consumers to reclaim belongings which had been stored in the warehouse for months.

The complaint seeks permanent injunctive relief, as well as restitution for injured consumers and the costs of litigation.

Comm. v. Jordan Marsh Stores Corporation

On November 1, 1993, the Division filed an assurance of discontinuance entered into by Jordan Marsh Stores Corporation, in which the Commonwealth alleged that the company routinely inflated the regular price of mattresses, box springs and other goods as a means to appear to offer large discounts during sales. State regulations provide that a seller cannot compare its sale prices to fictitious or exaggerated regular prices.

As part of the settlement, Jordan Marsh refunded $340,000 to approximately 6,000 consumers who purchased mattresses or box springs from October, 1992 through March, 1993. An additional $38,000 will be paid to the Local Consumer Aid Program. Jordan Marsh is also prohibited from pricing items with exaggerated regular prices as a means to advertise false discounts and from making savings claims without first possessing appropriate substantiation.

In the Matter of Meca Software, Inc.

On December 6, 1993, the Division filed an assurance of discontinuance in Suffolk Superior Court entered into by Meca Software, Inc., in which the state alleged that the packaging for Meca's "TaxCut" tax preparation software made misleading representations that the product could completely prepare for filing and print 1993 returns, when such was not the case.

Under terms of the settlement, in addition to paying $17,500 in penalties and costs, Meca agreed to refund the purchase price to consumers who were misled, ship a disclaimer sticker to be attached to the front panel of the product, and prominently disclose any functional limitations or additional requirements on future releases.

Commonwealth v. North American Directories, Inc., et al.

On December 14, 1993, the Division filed a lawsuit in Suffolk Superior Court against two Florida companies, North American Directories, Inc. and Directory Publishing Services, Inc., which allegedly sent misleading and deceptive solicitations to businesses under the guise that such solicitations were for authentic phone company yellow page directories.

Specifically, the complaint alleges the defendants failed to adequately disclose that the defendants do not publish the local "Yellow Pages" customarily distributed to all telephone subscribers in the local area; the directories are national, regional or statewide business-to-business directories which are not distributed to all telephone subscribers in the region; the recipients of the defendants' solicitations had not previously contracted with the defendants for placement of a yellow page advertisement or listing and the defendants are not affiliated with the New England Telephone Company, NYNEX, AT&T or the local phone company.

The complaint seeks restitution for consumers, injunctive relief and civil penalties.

Commonwealth v. Markline International, Inc.

On December 16, 1993, the Division obtained a consent judgment against Markline International, Inc., an East Weymouth catalog company, and its president, Robert D. Montague. The Commonwealth alleged that Markline had accepted payments from consumers, but had failed to ship merchandise to consumers, or honor its promise to return payments to consumer who were not completely satisfied.

Under the consent judgment, the defendants were required to pay $9,000 in restitution to more than 100 consumers from around the country. The consent judgment also enjoins the defendants from accepting payments and then failing to deliver the merchandise or make refunds as alleged in the Commonwealth's complaint.

Commonwealth v. Direct American Marketers, Inc.

On December 21, 1993, the Division filed a settlement agreement in Suffolk Superior Court with Direct American Marketers, Inc., a California-based sweepstakes promoter, who allegedly misled up to 15,000 Massachusetts consumers into believing they had won $7,500. Direct American agreed to return up to $250,000 to Massachusetts consumers who participated in a "900" number sweepstakes promotion. As part of the promotion, consumers received a reproduction of a check that made consumers believe they were the winners of $7,500. The back of the check revealed that the odds of winning were one in five million. Approximately 15,000 consumers called a "900" number to determine if they were actual winners.

In addition to paying up to $250,000 in restitution to consumers, the defendants also agreed to pay a minimum of $25,000 in costs to the Office of the Attorney General.

Millennium Telecom Agreement

On February 15, 1994, the Division reached settlement with Millennium Telecom, a Hawaii-based promoter of an alternative long-distance telephone service who had allegedly tricked consumers into authorizing a switch to its telephone service. Millennium set up an unmanned booth at a travel show, offering a drawing for a 7 night Hawaiian vacation for two, including airfare, luxury room and $1,000 in cash. More than 2,000 consumers filled out entry forms. Only in fine print on the form was a disclosure that the consumer was granting permission to Millennium to switch the consumer to a different long-distance telephone carrier. To settle the matter, Millennium agreed not to change the long-distance service for consumers who had filled out the entry forms, and to use the entry forms solely for the drawing of the Hawaiian vacation.

Commonwealth v. Kenneth Chobot and Kevin Chobot

On March 30, 1994, the Division filed a complaint against Kenneth and Kevin Chobot, two West Brookfield brothers for alleged violations of the state's consumer protection and environmental laws. The complaint alleged that the defendants approached elderly consumers and offered to cut and remove trees from their lots, pay the consumers for the wood, and clean up the site after the timber had been removed. Once the wood was removed, the defendants would disappear without repairing the site or compensating the consumers for the wood.

In the Matter of National Safety Associates

Also on March 30, 1994, the Division filed an assurance of discontinuance with National Safety Associates, a Tennessee-based multilevel distributor of water treatment devices. The Commonwealth alleged that several independent dealer/distributors of the defendant committed unfair and deceptive acts in the sale, distribution and promotion of the water treatment devices. Under the terms of the assurance, the defendant agreed to pay $28,000 to the Local Consumer Aid Fund, as well as agreeing to future compliance with the state's Consumer Protection Act.

Comm. v. Authorized Cleaning Services, Inc.

On April 8, 1994, the Division filed suit against Authorized Cleaning Services, Inc. and its principal, George Wayne MacLeod, for allegedly using unfair and deceptive acts and practices in the sale of carpet and furniture cleaning services. Specifically, the complaint alleges that the defendants used bait and switch tactics, charged more than the advertised or agreed upon price for services, added unauthorized charges to consumers' credit cards, failed to honor guarantees, failed to provide refunds and performed shoddy work.

The Commonwealth is seeking a court order prohibiting the defendants from engaging in these acts and practices, as well as ordering restitution to injured consumers, civil penalties and costs.

In the Matter of Fretter

On April 11, 1994, the Division filed an assurance of discontinuance entered into by the Fretter chain of appliance and electronic stores and its advertising agency, settling allegations that they violated Federal Trade Commission guidelines in airing a television commercial featuring misleading customer testimonials. The ads featured five actual customers extolling the virtues of Fretter, while making derogatory remarks about Circuit City and other Fretter competitors. The ad failed to disclose that each participant had been promised a payment of $700 before the commercial's taping, if their comments were used.

Under the terms of the settlement, $50,000 will be paid to the Local Consumer Aid Fund and an additional $6,500 will be paid to print consumer education materials.

Comm. v. Russ Movers, et al.

On April 20, 1994, the Division filed a lawsuit against a Malden-based moving and storage company and its principals, that allegedly improperly moved and stored consumers' property and were operating without the requisite licenses and certificates. The Commonwealth sought to prohibit the defendants from operating a moving and storage company in the Commonwealth, and obtain restitution for consumers as well as civil penalties.

On April 26, 1994, the Division obtained a preliminary injunction against the defendants, barring them from operating their business without the licenses, bonds and common carrier certificates required by law.

In the Matter of Roy Parkes d/b/a Shoppers Sampler;
In the Matter of Shawn Pieterse d/b/a Shoppers Sampler

On May 2, 1994, the Division filed assurances of discontinuance against two individuals involved in the solicitation and sale of the Shoppers Sampler coupon circular. Roy Parkes, of South Yarmouth and Shawn Pieterse of New Hampshire, produced and marketed the Shoppers Sampler coupon booklet in the Nashoba Valley area. The Commonwealth alleged that misrepresentations were made in the marketing, soliciting and sale of the coupon books to Massachusetts consumers. Pursuant to the assurances, the defendants agreed to provide $2,200 in restitution to affected consumers. Parkes and Pieterse have also agreed not to make misrepresentations in any future coupon book solicitations or sales.

Delaware v. New York

On June 16, 1994, the Division, in conjunction with the State Treasurers office and the Governor's office, announced that Massachusetts and New York had settled a dispute over unclaimed

interest and dividends on securities that New York had improperly escheated from Massachusetts-incorporated securities brokers. The settlement resulted in a total payment of $23.2 million to the Commonwealth and resolves Massachusetts' claims against New York in the U.S. Supreme Court case Delaware v. New York.

OTHER INITIATIVES

Hospital Merger Guidelines

On August 19, 1993, the Division released guidelines on hospital mergers. The guidelines are designed to clarify antitrust law as it applies to hospital mergers in Massachusetts. Specifically, the guidelines address horizontal mergers and similar transactions among acute care hospitals. They set out the method of review used by the office so that parties will know ahead of time what the office's position on a particular transaction may be.

The Division has used these guidelines to review two mergers, in addition to the Beverly / Addison Gilbert merger discussed above, and determined that there was no cause to challenge the mergers. These two mergers involved Goddard Memorial Hospital and Cardinal Cushing General Hospital and Brigham & Women's and Massachusetts General Hospital.

Spanish Cite Your Rights Cards

As part of National Consumers Week (October 25 - 29, 1993), the Division released its popular "Cite Your Rights" cards in Spanish. The cards explain Massachusetts consumer law in 11 topic areas, including car sales and repairs, return policy, debt collection harassment, security deposits and defective goods.

Report on Passive Smoke in Fast Food Restaurants

On November 8, 1993, the office, joined by 15 other states, released a preliminary report recommending that fast food chains take steps to ban smoking in their restaurants. The report, "Fast Food, Growing Children and Passive Smoke: A Dangerous Menu," emphasized the dangerous effects of passive smoke on children, who make up 25 percent of the customers and 40 percent of the employees of fast food restaurants.

Federal Mortgage Escrow Rules

On February 1, 1994, Attorney General Harshbarger and the Attorney's General from 21 other states filed comments in strong support of proposed home mortgage escrow rules that will benefit homeowners. The proposed rules make clear that the amounts demanded by mortgage lenders for escrow accounts cannot exceed either the limits established by the federal Real Estate Settlement Procedures Act (RESPA) or the underlying mortgage contract, that consumers are entitled to fair procedures in the handling of escrow surpluses and shortages, and that the quality and content of information provided to consumers about their escrow accounts must be improved to ensure compliance by lenders and servicers.

FCC Cable Television Rate Freeze

On February 18, 1994, the Commonwealth and 21 other states joined in an amicus brief in support of the Federal Communication Commission's extension of the rate freeze for basic cable television service. The rate freeze, which was set to expire on February 15, 1994, was extended by the FCC until May 15, 1994, to allow the Commission time to promulgate further rate regulations. Subsequent to the FCC's order, Intermedia Partners and the Cable Telecommunications Association filed an emergency motion in the U.S. Appeals Court for the District of Columbia Circuit, seeking to block the FCC extension. (Note: The Appeals Court denied Intermedia's motion and allowed the extension.)

Report on Compliance with the Free Health Care Notice Law

On April 14, 1994, the Division issued a report detailing hospitals compliance with the Massachusetts uncompensated care pool statute and related laws requiring that hospitals apprise low-income citizens of the right to apply for necessary medical care under the state free health care program.

The report found that, while many Massachusetts hospitals are in compliance with all or most of the legal notification requirements, there remains clear room for improvement and greater attention to these requirements by a number of Massachusetts hospitals. In general, notwithstanding the technical nature of some of the rules, the report found that 60 percent of hospitals were out of compliance with one or more of the state or federal posting or notice requirements, while 40 percent of all hospitals were in full compliance.

Report on Cigarette Sales to Minors

On April 27, 1994, the Division released a report detailing the findings of a statewide survey of retailer compliance with the laws prohibiting the sale of tobacco to minors. As part of the survey, young people between the ages of 13 and 17 attempted to purchase tobacco products at stores in communities throughout the Commonwealth. The students were successful in buying tobacco products 159 out of 248 times, or 64 percent of the time. The survey was conducted at 109 stores in 23 different communities throughout the Commonwealth.

In addition to describing the survey methodology and results, the Attorney General's report details a number of steps that his office has already taken to reduce the sale of cigarettes to minors in the Commonwealth and makes specific recommendations to tobacco retailers about practices and procedures that should be implemented to minimize the illegal sale of tobacco to minors. The report also discusses a number of other innovative approaches that have been experimented with elsewhere in the effort to reduce teen smoking and warrant further examination.

CONSUMER COMPLAINT SECTION

The Attorney General's Consumer Complaint and Information Section provides individual help for consumers by mediating disputes with merchants and businesses; operates a telephone consumer information line that responds to thousands of consumer inquiries each year; and identifies developing trends and consumer scams for further legal action by the Division.

During fiscal year 1994, the Consumer Complaint and Information Section opened 4,587 complaints for mediation and closed 1,961 cases. As a result of the Section's mediation efforts, consumers recovered direct refunds of $89,294; services or goods valued at $197,051; and $113,764 in savings from negotiated settlements of disputes with merchants. The total monetary benefit for consumers was approximately $400,110.

In addition, the clerical staff screened and processed over 3,947 written complaints and referred approximately 189 cases to other divisions within the attorney general's office; 265 to other state or local agencies; 2,214 to local consumer programs, and 155 to out-of-state offices. The remaining complaints were returned to consumers because they involved issues that were beyond the jurisdiction of the attorney general's office or were private legal matters.

Consumer information specialists and mediators on the attorney general's consumer "hot line" responded to approximately 90,660 phone inquiries this past year, providing consumers with general information, educational pamphlets and guidelines, complaint forms, and referrals to appropriate federal, state, and local agencies.

Special projects and actions undertaken this year include the Complaint Section's Home Improvement Task Force which identified and mediated over 100 cases involving unregistered home improvement contractors; the Take-A-Break Student Travel action where mediators provided information for and intervened on behalf of over 900 distressed college students and parents to provide safe and timely flight services and accommodations; and the initiation of a Complaint Section Telemarketing Project to identify and pursue fraudulent telemarketing schemes. Since January 1994, mediators have resolved 150 complaints against telemarketers - over 75% from elderly citizens - and recovered approximately $22,000 for these consumers.

LOCAL CONSUMER PROGRAM
FACE-TO-FACE MEDIATION SERVICES

The Local Consumer Program/Face-to-Face Mediation Services are responsible for the administration of the Local Consumer Aid Fund (LCAF). The LCAF supports the state-wide network of nineteen Local Consumer Programs and eight Face-to-Face Mediation Programs through annual grants for the resolution of consumer problems. The Local Consumer Program Coordinator and Mediation Services Coordinator and Assistant Coordinators provide continuing support to grant recipients. The LCPs and FTFMPS, working in cooperation with the Office of the Attorney General, resolve thousands of complaints each year, and also identify patterns of unfair and deceptive acts and practices in the marketplace.

Funding for the local programs is allocated by the General Court pursuant to G.L. c.12 11G. In fiscal year 1994, $605,393 was appropriated by the legislature to the LCAF. Ten percent of that figure ($60,539) was retained by the Office of the Attorney General for administrative purposes.

In 1994, the nineteen local consumer programs handled over 11,000 written complaints, recovering over $2.8 million for consumers in the Commonwealth. The eight face-to-face mediation programs held 1266 mediations, with 972 agreements made, for a settlement rate of 77%.

In addition to its consumer complaint resolutions, the Mediation Services program has continued to implement its school-based mediation project, Student Conflict Resolution Exerts (SCORE). There are now 20 schools taking part in the program, and the Office of the Attorney General has provided $212,000 in funding to these programs, from settlements in consumer and other cases and $75,000 in funds from the Mass. Committee on Criminal Justice. In 1993/94, 1500 mediations were held in these programs, 98% resulted in agreements. Mediation services also provided Conflict Intervention Team services to Somerville High School and English High School.

In June 1993, the Charles Hayden Foundation of New York gave $75,000 to SCORE and Metropolitan Mediation Services (MMS) to pilot a 3-year comprehensive violence prevention program at Boston English's High school in Jamaica Plain. The Mass. Committee on Criminal Justice awarded Mediation Services with a $75,000 grant for SCORE programs at Haverhill High School, Taunton High School, Malden High School, Dorchester High School, and the Grover Cleveland Middle School.

The SCORE program and CIT have had the honor of being selected as finalists in the Ford Foundation's Innovations in State and Local Government award.

CIVIL RIGHTS DIVISION

BIAS MOTIVATED AND OTHER CIVIL RIGHTS ACT CASES

The Civil Rights Division has continued to actively enforce the Massachusetts Civil Rights Act, which authorizes the Attorney General to seek injunctive relief when the exercise of legal rights is interfered with by threats, intimidation, or coercion. In fiscal year 1994, the Division continued to combat violence and discrimination by obtaining a total of thirteen injunctions against 36 defendants who had interfered with the rights of Massachusetts residents on the basis of race, color, national origin, sexual orientation, and gender and to protect the First Amendment rights of a reporter and a member of a School Committee to expressing their views on controversial racial matters within their community.

In what may be the first use of a civil rights statute in combating domestic violence, the Division obtained a precedent-setting preliminary injunction against a man who engaged in an alleged pattern of gender-based and hate-motivated threats, intimidation, and violence against four separate women over a three year period. Each woman is alleged to have been systematically deprived of her most basic rights through a pattern of verbal and physical abuse. Because the defendant was motivated by his alleged bias against women as a class, the Division argued that the abusive treatment of these women violated the Massachusetts Civil Rights Act. As a result of the injunction, any further threats or intimidation by the Defendant against women whom he is dating, could result in a substantial prison sentence.

In other significant cases, the Division obtained injunctions against four males who terrorized an elderly woman with Parkinson's disease and her Haitian-American visiting nurse. The Division also obtained criminal indictments against an alleged member of the White Youth League, a racist skinhead group, for violating a civil rights injunction obtained by the Division in 1991.

HOUSING DISCRIMINATION

The Attorney General's Civil Rights Division has acted on its commitment to ensuring fair housing by filing, prevailing at trial, or settling 32 cases of housing discrimination involving allegations of discrimination on the basis of race, familial status, marital status, receipt of a housing subsidy, gender, and sexual orientation.

The Division has intervened in ten separate housing discrimination suits pending before the Massachusetts Commission Against Discrimination. These cases involve ten separate real estate agents in the Brookline and Newton area who have allegedly engaged in a practice of steering tenants with young children

away from rental units with lead-based paint, thereby shielding landlords from the statutory obligation to delead rental units occupied by families with children under six years of age. By intervening in these cases, the Attorney General hopes to modify realtor practices, to educate tenants about the right to fair treatment in the housing market and to enlarge the pool of safe, affordable housing for families with children.

On March 15, 1993, a Single Justice of the Supreme Judicial Court issued a precedent-setting decision granting summary judgment in favor of the Attorney General's Office and the Town of Barnstable. The Single Justice ruled that Old King Highway Regional Historic District Commission had no authority to litigate a case which had effectively halted construction of a 36-unit affordable housing development for low income elderly individuals or families in Barnstable. The Court's holding that the chief executive of a city or town can control a town board's decision as to whether to challenge an affordable housing project in that city or town, will provide substantial protection against opposition to the construction of such projects statewide. On December 14, 1993 the Supreme Judicial Court affirmed this decision.

In the case of Commonwealth v. Desilets, the Commonwealth alleged that the defendants had discriminated against an unmarried couple by refusing to rent an apartment to them based upon their marital status. The Attorney General filed an appeal to overturn a Superior Court judgment which exempted the defendants from compliance with the fair housing laws, based upon defendants' claim that their religious convictions prevented them from renting to the couple.

The Attorney General's Office filed an appeal to overturn the Superior Court's ruling, arguing that the defendants' voluntary entry into the business of owning and renting residential property subjected them to the fair housing law, and that the Defendant's practice of religion was not burdened by the application of those laws.

In July of 1994, the Supreme Judicial Court ruled on the case, holding that the Commonwealth must show a compelling interest in eliminating housing discrimination against cohabiting couples that is strong enough to justify the burden placed on the defendants' exercise of their religion. The Court remanded the case to the Franklin Superior Court for a hearing on that issue.

In an Appeals Court decision, Commonwealth v. Robert and Florence Dowd, the trial court had awarded substantial attorneys' fees to the Attorney General, after he prevailed in a claim of housing discrimination based on marital status. The decision was appealed and in August of 1994 the Appeals Court ruled that because of limiting language in the statute, the Attorney General may not receive an award of attorneys' fees under General Law c. 151B.

EMPLOYMENT DISCRIMINATION

In July 1994 the Division moved to intervene in cases filed before the Massachusetts Commission Against Discrimination, alleging that Bull HN Information System had discriminated against numerous former employees on the basis of their age, in violation of the state anti-discrimination act. The MCAD subsequently allowed the Attorney General's motion to intervene, which alleges that Bull HN engaged in a pattern of age discrimination in employee layoffs conducted since 1990. It is alleged that Bull HN has terminated older employees or forced them into early retirement while retaining and hiring younger employees.

MORTGAGE LENDING DISCRIMINATION

Since November 1992, Attorney General Harshbarger's Civil Rights Division has been involved in a comprehensive attack on fair lending barriers in the home mortgage lending industry in Massachusetts.

In March 1994, in what may serve as a model for fair lending practices, the Attorney General and the Massachusetts Bankers Association and 27 banks and mortgage companies entered into an unprecedented and far reaching agreement to effect systemic reform of the mortgage lending industry in Massachusetts.

The three year agreement stems from an investigation conducted by the Attorney General's Office which was prompted in large part by a 1992 study conducted by the Federal Reserve Bank. That study found that black and hispanic applicants were denied mortgages at a rate 60 percent higher than whites with similar financial circumstances and credit histories. Under the three-year agreement, the MBA has agreed to establish six programs and initiatives to discourage mortgage lending bias. These include: a college level program to train and recruit minorities for employment in the mortgage lending industry, including a student apprenticeship program; the organization and sponsorship of a comprehensive statewide credit and homebuyer educational program; the development of a comprehensive diversity, fair lending training module; the promotion of legislation that will encourage banks to undertake self-testing and comparative file reviews; and an agreement to jointly work for legislation for which would create state co-insurance for nonconforming loans.

The MBA has also agreed to ensure and to encourage its two hundred members to adopt internal practice changes including establishing a complaint management system, an ombudsperson to investigate complaints and internal second review programs; and designing a loan origination compensation structure that promotes low and moderate income lending.

The Attorney General and the MBA also announced the appointment of a three-member panel of banking experts who will

be responsible for the review of certain previously denied minority loan applications. The panel will review up to 120 minority applications from 24 separate institutions which the Federal Reserve identified in its 1992 study as potentially having been denied on an inappropriate basis. If the panel finds that any of the application were denied for discriminatory reasons, the applicant will be offered the choice of a $15,000 settlement, a refinancing of their present mortgage or a new mortgage loan.

The Attorney General also reached an agreement with First New Hampshire Mortgage Corp., one of the Commonwealth's largest residential mortgage lenders, to increase the company's relatively low number of minority loan applications. First NH agreed to establish model residential lending programs in Springfield and the Lowell, Lawrence, Haverhill areas as well as to make certain changes in the manner in which it handles residential loan applications in Massachusetts.

The Division Chief also served as a presenter in two national mortgage lending discrimination conferences; one sponsored by the U.S. Department of Housing and Urban Development in January 1994 and the other by the National Community Reinvestment Coalition in February 1994.

POLICE RELATED MATTERS

In a cooperative effort to promote civil rights, assist the police, and provide departments with technical assistance, the Attorney General's Civil Rights Division has continued to provide an extensive amount of civil rights training to police departments about subject matters including civil liability, sexual harassment, cultural awareness, hate crimes, and health clinic blockades and invasions. The Division has led or participated in many training sessions throughout Massachusetts including in the towns of Shrewsbury, Lincoln, Lowell, Woburn, Winchester, as well as at the State Police, Middlesex and Southeastern Massachusetts Police Academies. The Division also participated in the campus law enforcement statewide training program, sponsored by the Attorney General in January 1994.

The Division has also continued to investigate allegations of police misconduct and issue comprehensive reports, and has worked with departments to take remedial steps when credible evidence is found to substantiate the complaints. As a result of the Division's investigation of certain practices of the Chatham Police Department, the Board of Selectman in the Town of Chatham established a Community Advisory Committee to assist the police in more effectively serving that community.

The case of Commonwealth v. Adams, was a civil rights suit, filed in 1989, alleging that thirteen Boston Police officers used excessive force during the arrest of a motorist following a chase which ended in Brookline. After a two-week trial in January 1992

the Suffolk Superior Court issued a civil rights injunction against the individual police officers who had used excessive force during the arrest. A Supreme Judicial Court decision issued in December 1993 affirmed the court-ordered injunction, issued under the Massachusetts Civil Rights Act.

In May of 1994, after extensive negotiations initiated by the Attorney General, a modified final judgment by agreement involving all of the defendants, was entered. Under the terms of the agreement, the injunction will be vacated as of December 31, 1994. The parties also agreed to special supervision, training and reporting requirements through December 31, 1996.

OPERATION RESCUE

In response to numerous "rescue blockades" and clinic invasions that took place at Massachusetts health clinics which provided abortion and counseling services, in 1989 the Office filed a motion to join the ongoing case of Planned Parenthood v. Operation Rescue. A preliminary injunction was issued against Operation Rescue and other defendants in May 1990. After a two-week trial in Superior Court in 1991, a Permanent Injunction was issued against members of Operation Rescue which prohibited the blocking of entrances to clinics which provide abortion services and counseling. This injunction was appealed by the Defendants.

In April 1994, the Supreme Judicial Court issued a precedent-setting decision which affirmed the trial court's permanent injunctive order against clinic blockades and invasions by the defendants. The decision is a vital enforcement tool both because of the penalties available to law enforcement for violation of the order and because the injunction is broad in scope, prohibiting the defendants not only from blockading clinics, but also from directing and instructing others to blockade clinics.

As a result of this and earlier injunctions, 18 individuals have been found guilty of criminal contempt for violation of the court's order and no blockades have taken place since September 1992. In 1994, a Clinic Access Law was enacted by the State Legislature which has made it a crime in Massachusetts to blockade clinics.

GANG PROJECT ANNOUNCEMENT

The Attorney General has announced his intention to use the Massachusetts Civil Rights Act as a tool against gangs who are engaged in a pattern of threats and intimidation and who prey upon law-abiding residents in Massachusetts. In appropriate cases referred to the Division in the future, the Division will strongly consider filing an MCRA action against gang members whose terrorizing acts clearly deprive others of their most fundamental rights and freedom

LEGISLATIVE INITIATIVES

The Attorney General sponsored a bill to provide to the Attorney General in civil rights enforcement actions the authority to obtain compensatory damages on behalf of victims of civil rights violations and to collect the costs of litigation and reasonable attorneys' fees. Under the proposed bill, courts would also have the discretion to order a civil penalty against a defendant for violation of the civil rights law. The bill also provides that any civil penalties, attorneys' fees and costs that are recovered would be deposited in a special state fund to finance future civil rights actions by the Attorney general, to fund community education, and to finance the development and implementation of model civil rights and law enforcement training programs.

A law review article titled, "The Attorney General's Sponsored Bill to Amend the Massachusetts Civil Rights Act," co-authored by Attorney General Harshbarger and his Chief of his Civil Rights Division, published in the Boston University Public Interest Law Journal in the fall of 1993, discussed the proposed legislation.

OTHER SIGNIFICANT DIVISION INITIATIVES

In January 1994, the Attorney General's Civil Rights Division along with representatives of the U.S. Attorney's Office, District Attorneys' offices, local and state police departments, and the Federal Bureau of Investigations committed their resources and expertise to the formation of the Law Enforcement Hate Crimes Task Force. The Task Force members decided that the Civil Rights Division should serve as the central repository for all materials related to organized hate group activities in Massachusetts. The Division also developed an Intelligence Manual which summarizes all intelligence information collected related to organized hate groups and other hate crime activity in Massachusetts. The Task Force will focus on identifying organized hate groups, sharing information and expertise on hate groups, and coordinating federal and state law enforcement efforts to prosecute hate crimes at both the state and federal level. The Task Force is chaired by the Chief of the Civil Rights Division.

The Chief of the Division also participated as an active member of the Supreme Judicial Court Commission on Race and Ethnic Bias in the Courts, including involvement in public hearings and participation in the drafting and editing of the final report. The final report is scheduled to be issued on September 21, 1994

The Division Chief chaired, and division staff served as active members of the Boston Prosecutors-Police Civil Rights Task Force which coordinates the resources of local, state, and federal agencies to address civil rights issues arising in Boston. The Task Force addressed civil rights

harassment in South Boston and responded in a coordinated fashion to reported racial incidents in Charlestown. The Task Force has also met to develop strategies to apply civil rights laws to gang-related issues within the Boston Housing Authority projects.

The Division also chaired an office-wide AIDS Privacy Task Force whose initiatives include outreach, legal research, developing priorities in regard to legislation, litigation, and confidentiality issues.

DISABILITY RIGHTS PROJECT

In June 1993, Attorney General Scott Harshbarger announced the establishment of the Disability Rights Project within the Civil Rights Division of this Office. With the inauguration of this Project, the Office of the Attorney General substantially expanded its ability to guard and enforce the rights of individuals with disabilities. Significantly, the Attorney General placed the Project within the Civil Rights Division to underscore the critical message that disability rights are civil rights.

Since the announcement, the Project has been actively involved in a community education effort to increase public awareness about the establishment of the Project and disability law. The Project's audiences have included disability rights advocates, municipal officials and business owners.

The Project has three priority areas: A) access to municipal events and services, B) fair housing rights for individuals with disabilities and C) access to and non-discrimination by private entities. In each of these priority areas the Project has been able to achieve solid results, all of which have been attained without having to file suit.

The Project's efforts to increase access to municipal events, services and programs have been very successful. The Project received complaints from the citizens in the following municipalities: Canton, Carver, Chelsea, Clinton, Easthampton, Hingham, Marshfield, Sheffield, Southboro, Sturbridge, Templeton, Wareham and Woburn, who complained that the public meetings were being conducted in physically inaccessible locations. In each instance, the Disability Rights Project contacted municipal officials and requested that they cease convening public meetings in those locations. In each instance the officials responded by immediately moving all open meetings conducted by the local committees and boards to alternative accessible facilities. The Project has also worked with the towns to establish policies which ensure that all municipal services are provided in an accessible manner. In addition, a number of towns, including Canton, Clinton, Marshfield, and Woburn, have allocated substantial sums of money for accessible renovations that will afford access to their town building.

The Project had significant accomplishments in the area of affording access to and non-discrimination by private businesses. Businesses have been utilizing the Project in a consulting capacity as they move forward to build or reconstruct their facilities to afford access and redraft policies to ensure non-discrimination against individuals with disabilities. The Project has sought to respond to complaints against companies in a nonadversarial manner which has enabled us to resolve the issues successfully without litigation. For example, the Project received a complaint that an individual who is deaf experienced difficulty in attempting to obtain services at New England Telephone's (NET'S) service center in Hyannis. The individual sought to clarify a billing dispute. Typically, a customer can resolve such issues by using a free phone in one of the company's service center to talk to a supervisor. When this individual indicated his need to use a TTY (text telephone), he was informed that the customer service center did not have a such equipment. The Project's follow-up factual investigation revealed that none of the phone centers were equipped with TTYs.

When the Disability Rights Project contacted New England Telephone, the Company immediately responded to the issue, proposing a solution which not only served the needs of individuals in Massachusetts, but throughout the Company's five-state service area. NET agreed to install TTYs in each of the 21 Customer Service Centers throughout New England.

In another case, the Project reached a settlement with Plymouth Brockton Bus Co. (P & B) in which they agreed to modify their policy and practice for provision of accessible bus service. The issue was brought to the Project's attention growing out of a concern that P & B's existing policy of requiring a 24-hour advance reservation prevented persons with disabilities from effectively being able to use P & B. The problem was particularly acute when members wished to use accessible buses going to and from the airport or Boston. After a series of meetings with P&B, the agreement provided for a much shorter advance reservation requirement and other contingent arrangements so that individuals needing accessible bus service would avoid the risk of being stranded in Boston or at the airport.

Private universities are also covered under this priority area. An early complaint concerned a local university's plan to hold their paralegal graduation in an inaccessible location. Although the woman herself could have, with difficulty, managed to attend the ceremony, several of her closest friends would have been precluded from attending the event. When the Project contacted the school's counsel, the school immediately agreed to move the graduation to a physically accessible location.

In the third priority area, the Project has worked to enforce fair housing rights for individuals with disabilities, particularly those who encounter opposition to their desire to

reside in the community of their choice. For instance, this office was contacted by representatives of Hope House concerning problems they experienced in connection with their attempt to develop a 10 person residence in Fall River for individuals diagnosed with AIDS. Their greatest obstacle was the City's zoning ordinances which interfered with the establishment of group residences in Fall River by limiting such groups to four unrelated persons living together without a special permit process. The Project sent a letter to the City Solicitor which discussed how state and federal laws applied to the Fall River ordinance. As a result of the letter, the City determined that Hope House was not subject to the ordinance, and issued a permit allowing the project to go forward.

A woman with a seizure disorder contacted this Office when her landlord threatened to evict her, based upon the presence of a dog in her unit, in violation of the building's "no pet" rule. The complainant asserted that the dog had the ability to forewarn her of seizures. State and federal law requires that landlords make a reasonable accommodation in their rules, policies or procedures to ensure that an individual with a disability had an equal opportunity to use and enjoy a dwelling. (M.G.L. Ch. 151B §4). After learning of a kennel that trains and certifies seizure dogs, the Project put the complainant and kennel in touch with each other. Within a week, the kennel had certified the complainant's dog as a Seizure Alert Dog and initiated a "continuing education and training" program. The complainant provided the landlord with the dog's certification and may now stay in the apartment.

When Attorney General Scott Harshbarger announced the establishment of the Disability Rights Project, he specifically emphasized the importance of community education. To that end, the Project has conducted numerous informational sessions on the Project and have presented many trainings on disability law. Some of the notable events include: A) welcoming remarks and talk on the Disability Rights Project at a conference for individuals of color with disabilities, social service agencies and businesses serving that community, B) served as keynote speaker to 300 people at the Annual Consumer Conference sponsored by Massachusetts Rehabilitation Commission, C) presented ADA update at annual convention of Town Counsel and City Solicitors, D) presentation on the ADA and Libraries Seminar sponsored by the Social Law Library, E) wrote a chapter on Title II of the ADA and Municipal Law for inclusion in MCLE book on Municipal Law, and F) wrote a chapter on Legal Rights of Individuals with Disabilities in the School Context for MCLE on School Law and was panelist at MCLE conference.

In an effort to further assist the individuals who contact the Project for information and assistance, the Project has prepared materials which address such subjects as municipal law, school law, employment rights of individuals with disabilities, and

questions and answers on Title II of the Americans with Disabilities Act.

The work of the Disability Rights Project has been well received by the disability community. In fact, Attorney General Scott Harshbarger was awarded the first annual Access Plus Award by the Stavros Independent Living Center for his role in furthering independence for people with disabilities, for promoting their civil rights and for initiating the Disability Rights Project in his office.

ENVIRONMENTAL PROTECTION DIVISION

The Environmental Protection Division (EPD) serves as litigation counsel on environmental issues for various state agencies, particularly those within the Executive office of Environmental Affairs. EPD handles the Commonwealth's civil litigation to enforce environmental protection programs established by state statutes and regulations, including laws governing air pollution, water pollution, water supply, waterways, wetlands, hazardous waste and solid waste. In addition, EPD is responsible for the Commonwealth's asbestos cost recovery litigation and matters arising from the operation of nuclear power plants. Based on the Attorney General's broad authority to protect the environment of the Commonwealth, EPD initiates and intervenes in state and federal litigation, and participates in administrative hearings before federal agencies on significant environmental issues.

Money ordered to be paid to the Commonwealth:

Hazardous Material Cost Recovery:	$14,318,407
Civil Penalties and Payments:	$ 922,000
Asbestos Cost, Recovery/Damages:	$15,063,000
Other (costs paid to Consumer Aid Fund)	$ 15,000
TOTAL:	$30,318,407

Money Saved the Commonwealth:

Many cases resulted in court judgments requiring private parties to undertake costly cleanups - a savings of millions of dollars for the Commonwealth.

1. STATE ENFORCEMENT

One of the most important functions of EPD is to bring litigation to enforce state and federal environmental statutes. In the past fiscal year, EPD handled numerous major enforcement cases, including the following:

A. Air Pollution

Commonwealth v. BP Exploration & Oil, Inc.:

This Massachusetts Clean Air Act case involved alleged violations arising from gasoline loading of trucks and barges. The Commonwealth obtained a consent judgment that requires BP to install state-of-the-art air emissions control equipment, enjoins further violations of the Clean Air Act, requires payment of a $200,000 civil penalty, and payment of $75,000 to the Massachusetts Environmental Trust.

Commonwealth v. Roche Bros. Barrel & Drum Co., Inc.:

The Commonwealth alleged that Roche Brothers, a Lowell, Massachusetts drum reclamation, fabrication and painting business, illegally emitted volatile organic compounds ("VOCs") into the air and released hazardous materials into the ground. The Commonwealth obtained a consent judgment requiring Roche Brothers to undertake activities to reduce emissions of VOCs into the air and prevent the release of hazardous materials. In addition, Roche Brothers paid a $100,000 civil penalty pursuant to the Massachusetts Clean Air Act and Hazardous Waste Management Act.

Commonwealth v. Ashworth Bros., Inc.

The Commonwealth alleged that Ashworth Brothers recycled, treated and disposed of acetone in a manner that violated the Massachusetts Clean Air Act and the Hazardous Waste Management Act. The case was resolved by a consent judgment that requires Ashworth Brothers to manage its acetone and by-products in accordance with its recycling permit and to pay a $10,000 civil penalty. In addition, the settlement requires Ashworth Brothers to implement source reduction to reduce its use of acetone and water.

Commonwealth v. P.T. Petro:

The Commonwealth obtained a consent judgment that requires payment of $15,000 to the Commonwealth for alleged violations of the Massachusetts Clean Air Act that occurred when the defendant transferred gasoline from a tank truck into an underground storage tank without using required vapor recovery equipment.

Commonwealth v. Marathon Enterprises, Inc.:

The Commonwealth obtained a consent judgment in this Massachusetts Clean Air Act case against a gasoline distributor for allegedly dispensing fuel without required vapor recovery equipment. Marathon Enterprises paid the Commonwealth a $50,000 civil penalty.

B. Water Pollution/Water Supply

Commonwealth v. Town of Ashfield:

The Commonwealth obtained a consent judgment to resolve its Massachusetts Clean Waters Act claims against the Town of Ashfield. The consent judgment requires the Town to construct a wastewater collection system to serve the center of Ashfield and a wastewater treatment plant.

Commonwealth v. U.S. Department of Defense:

The Commonwealth obtained a consent decree requiring the U.S. Department of Defense to bring its Natick, Massachusetts facility into compliance with its sewer discharge permit, remediate mercury contamination, cease discharging cooling water into Lake Cochituate, and to pay $10,000 to the Commonwealth in attorneys' fees.

Commonwealth v. American Telephone & Telegraph CO.:

The Commonwealth alleged that AT&T illegally discharged hexavalent chromium from its North Andover facility into the Merrimack River in violation of the Massachusetts Clean Waters Act and the Massachusetts Oil & Hazardous Material Release Prevention and Response Act. The consent judgment required AT&T to institute environmental training for its employees and pay a civil penalty of $75,000. As a result of the litigation, AT&T eliminated use of hexavalexit chromium as a rust inhibitor at the facility, and performed $900,000 worth of improvements to prevent such releases in the future.

Eben S., et al. v. William S. Rafter, Jr., as he is the Mayor of the City of Gloucester et al.:

This suit was brought by twenty-three citizens to stop the construction of pressure gravity sewers in the Annisquam area of North Gloucester. The Commonwealth intervened in the action because of concerns that the dispute would cause the City to miss consent decree deadlines requiring it to extend the sewer system to North Gloucester. The citizens and the City of Gloucester agreed to settle the lawsuit by allowing then Mayor-Elect Bruce Tobey the opportunity to evaluate two types of sewer collection systems when the City extends its wastewater collection system to the Annisquam area.

Commonwealth v. Forrow Builders:

The Commonwealth brought suit against the developers of a condominium complex that allegedly installed a failing sewage disposal system in violation of the Massachusetts Clean Waters Act and Title 5 of the State Environmental Code. The final judgment required the developers to construct a sewer collection system and, a pump station at the condominium complex, and to connect to the town sewer system.

Commonwealth v. Winfield Brooks Co., Inc.:

The Commonwealth alleged that Winfield Brooks illegally discharged industrial wastes into the Massachusetts Water Resources Authority ("MWRA") sewer system in violation of the Massachusetts Clean Waters Act. The consent judgment required the defendant to cease discharges of industrial wastewater into the MWRA sewer system until it obtains a new MWRA sewer use discharge permit. In addition, the defendant was required to pay civil penalties of $75,000.

C. Hazardous Waste

EPD brings lawsuits against responsible parties to remedy contamination caused by oil or hazardous materials, including litigation to recover costs incurred by the Commonwealth when it undertakes cleanup actions. In the last fiscal year, EPD handled the following major hazardous waste cases.

Commonwealth v. Pal-Rath Realty, Inc. and Standex International Corp.:

This case involved the contamination of a public water supply in Palmer, Massachusetts. Pursuant to the terms of the consent judgment, the defendants paid $2.1 million, of which $975,000 went to the Commonwealth and the remainder was paid to the Palmer Water District. The payment is reimbursement of costs incurred in assessing the contamination, constructing a water treatment plant and also the future costs of operating the treatment plant.

U.S. v. General Chemical Corp., et al.:

This case involves the Silresim Stiperfund site, a five-acre abandoned chemical waste recycling facility in Lowell, Massachusetts. In November, 1993, the court approved a consent decree that requires 230 defendants to pay the Commonwealth and the United States a total of $40 million for the remediation of the site. The Commonwealth and the United States allocated the proceeds of the settlement so that 38% of the proceeds will be paid to Massachusetts.

Commonwealth v. Bay State Smelting Co., Inc.:

This case involved allegations that Bay State Smelting illegally stored hazardous wastes at its Somerville facility, thereby exposing workers to contaminated lead (Just. The civil judgment requires Bay State Smelting to perform corrective measures at its Somerville facility to ensure that lead and other hazardous materials are properly managed, that workers at the facility are protected from unnecessary exposures, and that air emissions from the facility comply with applicable standards. The Criminal Bureau handled a parallel criminal proceeding that resulted in the defendant making a $500,000 payment into a fund designed to assist the working poor in asserting their rights to a safe workplace.

Commonwealth v. Omega Processing Co., Inc.:

The Commonwealth alleged that this Monson electroplating company released hazardous materials into the Chicopee Brook. The electroplating facility closed immediately after the spill, and never reopened. The consent judgment requires Omega Processing to sell its only asset, the electroplating facility, and give the proceeds to the Commonwealth.

Commonwealth v. Stephen Bobrow, et al.:

The owners and developers of a shopping center in Somerville allegedly disposed of 40,000 cubic yards of contaminated soil at unlicensed disposal sites without proper approvals. The consent judgment requires the owners and developers to pay a $75,000 civil penalty.

U.S. v. Charles George, et al.:

This case involves the Charles George Superfund site, a heavily contaminated landfill in Tyngsborough, Massachusetts. In December, 1992, the state and federal governments lodged a consent decree in federal court that provides for payment by a

number of defendants of $35 million in costs and damages, of which approximately $12 million will go to the Commonwealth. In November, 1993, a second consent decree was entered in federal court that requires the two members of the George family, James and Charles, Jr., and C & J Trucking Company, to pay $3.1 million in response costs and natural resource damages in connection with the landfill. Litigation with other members of the George family, the only remaining defendants in the case, is ongoing.

Commonwealth v. Mohawk Auto Wrecking, Inc., et al.:
The Commonwealth obtained a consent judgment with Mohawk Auto Wrecking and other defendants that required them to pay $15,000 to the Commonwealth for response costs incurred in connection with a release of oil, to comply with hazardous waste laws, obtain necessary licenses to collect, transport, use, dispose of or store hazardous waste, and to make investments to eliminate or reduce future risks to the environment.

D. Wetlands

Commonwealth v. Robert Dicore:
The defendant allegedly willfully and repeatedly violated the Wetlands Protection Act and enforcement orders of the local conservation commission by altering wetlands on his property. Pursuant to a consent judgment, the defendant agreed to restore damaged wetlands and pay a $70,000 civil penalty.

Commonwealth v. Point of Pines Yacht Club Inc.:
The Commonwealth alleged that the Point of Pines Yacht Club in Revere, Massachusetts destroyed coastal beach and dunes with a front-end loader, contributing to flooding and storm damage in the area. The consent judgment required the yacht club to restore coastal dunes and beach grass on its site, enjoined work in wetlands on the site without proper permits, and ordered the yacht club to pay a $25,000 civil penalty under the Wetlands Protection Act.

Commonwealth v. John Stringer:
The defendant allegedly destroyed a habitat for wildlife by dismantling a beaver dam, and causing drainage of a fifteen to twenty acre pond. The defendant is required by a consent judgment to repair the dam, pay $30,000 in civil penalties to the Commonwealth, $2,000 to the Audubon Society and $700 to the Department of Fisheries, wildlife and Environmental Law Enforcement.

Commonwealth v. Town of Montgomery:
The Commonwealth brought suit against the Town of Montgomery for alleged violations of the Wetlands Protection Act in connection with a 1986 bypass construction project. Pursuant to a consent judgment, the Town agreed to restore altered wetlands areas.

Commonwealth v. Consigli Construction Co. and Matellian Family Trust.:

The Commonwealth obtained a final judgment requiring restoration of wetlands in Upton, Massachusetts that the defendants allegedly filled with demolition debris. The judgment also required payment of $30,000 in civil penalties to the Commonwealth.

E. Deceptive Environmental Advertising

EPD and the Consumer Protection Division are involved in a multi-state Environmental Marketing Taskforce that has issued recommendations for responsible environmental advertising as well as taken enforcement actions in cases involving allegedly deceptive "green" advertising claims that certain products have reduced impacts on the environment. In the last fiscal year, Osram-Sylvania, Tnc. entered into a settlement agreement to pay $135,000 to the multi-state taskforce, including Massachusetts, and to discontinue certain advertising claims that its light bulbs conserve energy or otherwise provide greater benefits than other manufacturers' bulbs. The Commonwealth alleged that Sylvania promoted its "Energy Saver" incandescent bulbs as representing a technological breakthrough that would help conserve resource, when in fact, most of the energy savings realized from using these bulbs arises simply because they emit less light, not because they are more efficient.

II. CLEAN STATE INITIATIVE

During the past year, EPD continued to pursue Attorney General Harshbarger's clean state initiative. The clean state initiative seeks to ensure that the state's own facilities are in compliance with environmental laws and that any environmental problems at state facilities are addressed promptly. Last year, discussions between the AG's Office and Governor Weld's Office resulted in Governor Weld's issuance of an executive order designed to bring state agencies into compliance. Attorney General Harshbarger is monitoring implementation of the executive order.

III. INTERVENTION IN FACILITY SITING PROCEEDINGS

The Commonwealth intervenes in facility siting proceedings when it determines that intervention is necessary and appropriate to protect the public health or the environment. In the past year, EPD has been involved in ongoing proceedings in opposition to the siting of several coal-fired power plants that will produce significant amounts of air contaminants and a gas-fired plant.

The Commonwealth intervened in the siting of the Inter-power coal-fired power plant in Halfmoon, New York, primarily because the plant would increase acid rain impacts in the Berkshires in Massachusetts. In the past year, the New York, Supreme Court, Appellate Division, granted the Commonwealth's petition for

review and revoked the certificate previously granted by the New York Siting Board to construct and operate the Halfmoon energy facility on the basis that the Siting Board had failed to balance properly the economic and environmental impacts from the project.

EPD is also involved in ongoing power plant siting proceedings involving the Silver City facility in Taunton, Massachusetts, the Eastern Energy facility in New Bedford, Massachusetts, and the Allresco Lynn, Inc. facility in Lynn, Massachusetts. In January, 1()94, the Attorney General filed an appeal with the Supreme Judicial Court- from the Energy Facilities Siting Board's conditional approval of the construction of Eastern Energy Corporation's proposed 300 megawatt power plant.

IV. NOTICE OF NONCOMPLIANCE PROJECT

EPD has been engaged in a joint project with the Department of Environmental Protection (DEP), to review DEP's use of Notices of Noncompliance (NONs) and to assist DEP in strengthening its administrative enforcement. EPD and DEP together reviewed over 100 NONs, and are working together to devise strategies to improve DEP's enforcement.

V. DEFENSIVE CASES

One of the critical functions of EPD is the defense of lawsuits challenging the regulatory and enforcement actions of state environmental officials and agencies. These cases involve numerous challenges to state permitting decisions, as well as challenges to the legality of state environmental regulations.

For example, in American Automobile Manufacturers Association, et al. v. Commissioner of Environmental Protection, et al., EPD is defending Massachusetts' adoption of low emission vehicle standards against a challenge brought by automakers from around the world and dealers in Massachusetts. Massachusetts has adopted lower "California" emissions standards for cars to reduce ground-level ozone level and to facilitate compliance with the federal Clean Air Act. Motor vehicle emissions account for more than one-third of the man-made pollutants that contribute to urban smog. In November, 1993, the Federal District Court denied the auto industry's motion for a preliminary injunction that sought to derail Massachusetts' implementation of the low emission vehicle program. In denying the request for preliminary relief, the court found that the auto industry had little chance of invalidating the disputed regulations.

In Nelson v. Commonwealth, property owners alleged that application of Wetlands Protection Act restrictions on seawalls to their properties amounted to an unconstitutional taking. The Commonwealth successfully defended this challenge before the Massachusetts Appeals Court, which affirmed the lower court's decision dismissing the taking claim and upholding the wetlands regulations.

In Joel A. Qribens v. Department of Environmental Protection, the Massachusetts Appeals Court ruled in favor of the Department of Environmental Protection, holding that failure to issue a decision in a wetlands case within seventy days (did not render the agency's subsequent decision invalid. The court held that the seventy day provision of the Wetlands Protection Act is directory rather than mandatory.

VI. AMICUS PARTICIPATION

EPD participates as amicus curaie in matters that affect legal rights of the Commonwealth. For example, EPD filed an amicus brief in the Supreme Judicial Court in Pazolt v. Philip G Coates, Director of the Division of Marine Fisheries, et al., arguing that the aquaculture in the intertidal zone was protected under the right of fishing reserved to the public under the public trust doctrine.

In addition, EPD filed an amicus brief in the Supreme Judicial Court in Point of Pines Beach Association, Inc. v. Energy Facilities Siting, requesting that the Siting Board's approval of a new 170-megawatt gas-fired power plant in Lynn, Massachusetts be overturned.

DIVISION OF PUBLIC CHARITIES

The Attorney General represents the public interest in the proper solicitation and use of all charitable funds. The Attorney General is authorized to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c.12, sec. 8. The Division of Public Charities is established by G.L. c.12, sec. 8B to carry out the Attorney General's responsibilities in this area.

To protect the public interest in this area, more than 32,000 charities are registered with the Division, as well as 211 fundraisers operating in Massachusetts. A charitable organization is one which is non-profit, whose purpose is charitable and which benefits a portion of the public; in addition to philanthropic organizations, examples of public charities include nonprofit hospitals, schools, social service providers, and cultural organizations. As well as registering and obtaining financial reporting by charitable organizations and fundraisers, the Attorney General is the defendant in all proceedings brought in the Supreme Judicial Court to wind up the affairs of a charitable organization.

In addition to enforcement of laws requiring annual reporting by public charities operating in the Commonwealth, the Division focused its activities during the last fiscal year in three primary areas: enforcement litigation to address deception and fraud in charitable fundraising; estate and trust actions to ensure charitable trust funds are appropriately administered and applied; and corporate governance and oversight initiatives to ensure charitable governing boards are carrying out their fiduciary duties of due care and loyalty.

In partnership with the Attorney General's Advisory Committee on Public Charities, the Division has also undertaken a continuing public education campaign regarding charitable giving and charity stewardship.

SOLICITATION OF CHARITABLE FUNDS

The Attorney General takes affirmative legal action against charities and professional fundraisers for unfair or deceptive solicitation practices and to enforce their fiduciary duties with respect to funds raised. In addition to injunctive relief, he may seek restitution of funds intended by the public to benefit a specific charity or particular charitable purpose, penalties, and fees.

Following are examples of charitable solicitation cases in which the Division was involved in the last fiscal year:

Commonwealth v. International Missing Children's Foundation

In October, the Division obtained a consent judgment permanently prohibiting fundraising in the Commonwealth against International Missing Children's Foundation (IMCF), a California-based charity. IMCF was also required to make a $1,000 payment to the Attorney General's Local Consumer Aid Fund. The Division's complaint alleged that David Giovannucci d/b/a Professional Consultants, a professional fundraiser working on IMCF's behalf, had used scripts instructing his employees to deny that they worked for a professional fundraiser and to state incorrectly that the fundraising campaign was affiliated with the Andover Police.

The Division previously obtained a consent judgment against Giovannucci, whose business is located in Smithfield, Rhode Island, prohibiting him from engaging in deceptive fundraising practices and requiring him to pay $13,000 in fines.

Commonwealth v. National Awareness Foundation and O'Leary Enterprises, Inc.

In October, the Division obtained a consent judgment against O'Leary Enterprises, Inc., a Massachusetts corporation owned by professional solicitor Sean O'Leary. The corporation agreed to a permanent ban on charitable solicitation in Massachusetts.

The Attorney General had brought suit in January 1993 against National Awareness Foundation (NAF), a Washington, D.C.-based charity, and its solicitors, including O'Leary, alleging that they used deceptive solicitation practices to raise money from Massachusetts citizens by falsely telling donors their contributions would pay for distribution of "Hugs Not Drugs" workbooks in their local elementary schools, failing to disclose that they were paid solicitors, using the names of local school systems without authorization, and failing to distribute workbooks. A consent judgment obtained against NAF imposed a one year ban on charitable solicitation in Massachusetts beginning January 1993, a permanent injunction against unfair and deceptive solicitation practices, payment of $2,000 in costs and fees, and restitution.

In July 1993, restitution payments of $1,000 each were distributed to school departments in Chicopee, Framingham, Groton, Hadley, Holyoke, Lowell, Natick, Northborough, Shrewsbury, Southwick, Springfield, Westfield and Worcester.

Commonwealth v. Chosen Children Foundation and Joel Weinstein

In November, after a trial, a consent judgment was entered against Chosen Children Foundation of Stoughton; its founder and president, Joel Weinstein, of Stoughton; and its Massachusetts state director, Eric Weinstein (Joel Weinstein's son), of Randolph. The lawsuit alleged that the Weinsteins deceived the public by holding out Chosen Children as a charity benefiting handicapped children, when in fact they were using the donated

money to enrich themselves. In November 1992, a temporary receiver had been appointed to operate the entity.

The consent judgment removes the Weinsteins as officers and directors of Chosen Children and all its affiliates and requires them to cause such affiliates to return funds transferred from Chosen Children. It also permanently bans Joel Weinstein from all fundraising or other charitable activity in Massachusetts or with Eric Weinstein and from all such activity outside Massachusetts for five years. Joel Weinstein must pay $30,000 in restitution to the receiver, which penalty is not dischargeable in bankruptcy. Eric Weinstein is banned from all fundraising or other charitable activity in Massachusetts for five years. Finally, the receiver is directed to wind up Chosen Children's activities and have it dissolved.

Commonwealth v. Kevin Kestyn d/b/a Laser Care Marketing

In December, the Division obtained an Assurance of Compliance from this business, ending its use of the names of local charities to promote the sale of Christmas trees without the charities' permission. Kestyn allegedly advertised that a portion of the purchase price of each Christmas tree he sold would benefit a veterans' homeless shelter. The Division alleged that when his negotiations with the New England Shelter for Homeless Veterans fell through, Kestyn informed consumers calling to order a tree that proceeds would benefit Rosie's Place. Although Kestyn was in contact with both these charities, he had not registered with the Division as a commercial co-venturer before utilizing a charitable appeal in advertising his product, and failed to obtain written authorization before using the charities' names.

Commonwealth v. Allan C. Hill Productions

In January, the Division obtained a consent judgment against Allan C. Hill Productions, a Sarasota, Florida, company which sells tickets to circuses and plays which it produces for civic and charitable entities throughout the East Coast. The court order prohibits Hill from engaging in deceptive solicitation practices and requires it to pay $10,000 to the Attorney General's Local Consumer Aid Fund.

The complaint alleged that telemarketers working for Hill used the names of certain charitable organizations without authorization, failed to disclose they were professional fundraisers, and falsely led prospective purchasers of tickets to a play produced at Canton High School for the benefit of the Canton Recreation Department in December 1993 to believe that every ticket bought would be donated to disadvantaged children and the elderly. In fact, fewer that 250 of the over 7,000 tickets sold were used by such persons; the Canton Recreation Department received $10,000 of the $50,000 raised.

The consent judgment further requires Hill to refund twice the ticket price to any ticket holder denied admission to any event

it produces due to overbooking and prohibits Hill from saying that tickets will be donated to the disadvantaged or the elderly, unless he has written commitments from organizations providing such guests prior to the solicitation.

Commonwealth v. R.H. McKnight, Inc.

In January, the Attorney General obtained a consent judgment against this statewide police fund-raising company based in Falmouth. Without admitting liability, McKnight, Inc. agreed to a consent judgment requiring increased monitoring and oversight of persons it hires to conduct police fundraising, to ensure that the fundraising does not mislead the public.

The Attorney General's complaint alleged that a McKnight, Inc. fundraising campaign on behalf of a statewide union of police officers misled potential donors to believe that the donated funds would benefit local police departments. McKnight, Inc. agreed to pay $5,000 to the Local Consumer Aid Fund and $2,500 to the Barnstable County Deputy Sheriffs Association Youth Ranch.

Commonwealth v. Association of Retired Police Chiefs and Samuel Farrell

In March, the Division obtained a consent judgment settling a case previously filed against a Holbrook-based organization and its founder. The court order requires dissolution of the entity and permanently bans Samuel Farrell, of Brockton, from fundraising or handling charitable funds in Massachusetts. Farrell must also pay restitution of $10,000 to the Local Consumer Aid Fund.

The complaint alleged that ARPC fundraisers falsely identified themselves as members of the Westfield, Palmer, and Holyoke police departments to residents in those communities; that the name was misleading since no police chiefs, active or retired, were members of the group nor was it affiliated with any police group; and that the names of deceased police chiefs and others with no affiliation with the organization were used to mislead donors.

Commonwealth v. Project Care, Thelma Moss and Arthur Turner

In May, the Attorney General obtained a preliminary injunction in a suit filed in April against a Springfield-based charity and two of its board members alleged to have deceptively raised money on the streets of Northampton for the homeless. The defendants agreed to stop all fundraising in the state until the suit has been resolved, to account for all funds solicited from the public since Project Care's inception, and to file all past due financial reports with the Division of Public Charities.

The complaint alleged that representatives of Project Care approached members of the public in person and induced them to make cash donations by using the names of local organizations serving the homeless and falsely implying that such organizations would benefit from the funds raised. Affidavits from eight

organizations serving the homeless in the Springfield and Northampton areas were filed with the complaint, stating that the organizations had not authorized use of their names nor endorsed Project Care's solicitation and had not received any funding from it. The complaint further alleged that Project Care failed to file required annual financial reports with the Division for the fiscal years 1989 through 1992 and sought restitution and penalties in addition to an accounting and injunction.

American Veterans Assistance Corporation, a/k/a Veterans Wish Foundation, and RD Marketing

In May, the Attorney General filed suit against this California-based veterans group and its Woburn fundraiser. AVAC also goes by the name Veteran's Wish Foundation. The complaint alleged that RD Marketing engaged in deceptive telemarketing practices on behalf of AVAC by leading potential donors to believe that the California veterans group was located in Lowell or Framingham and that the money raised would go to help local veterans. The fundraiser also failed to make mandatory disclosures, including disclosure of its status as a professional fundraiser.

After the filing of the Attorney General's suit, both the fundraiser and the charity agreed to preliminary injunctions enjoining them from using these and any other deceptive practices.

Commonwealth v. David Giovannucci d/b/a Professional Consultants and P.C. Marketing

In June, the Attorney General filed a complaint for contempt against a Rhode Island-based fundraiser who, while soliciting on behalf of an Oxford police association, allegedly violated a 1993 court order barring him from deceptive fundraising practices. The complaint alleges that Giovannucci's telemarketers violated the 1993 order by giving potential donors the false impression that all funds donated would go to charity and that the callers were police officers. The complaint also alleges that the telemarketers failed to disclose that they were professional fundraisers. The Attorney General seeks a three-month ban and $10,000 for each violation of the court order, in addition to restitution and attorneys' fees.

ESTATES AND TRUSTS

In furtherance of his authority to "enforce the due application" of charitable trust funds and to "prevent breaches of trust in the administration thereof," the Attorney General is an interested party in the probate of all estates in which there is a charitable interest and in all other judicial proceedings affecting charitable trusts. Accordingly, the Division continued to handle a large volume of cases in this area involving such matters as proposed allowance of accounts, will compromises, sale of real estate, change of purposes or beneficiaries of charitable trusts and bequests, amendment of charitable trusts to meet IRS

requirements, and termination of charitable trusts under G.L. c.203, §25. For example:

Trustees of Trust under Will of Carolyn Weld Fuller and Fuller Trust, Inc.

In July 1993, the Division submitted its brief to the Supreme Judicial Court on seven questions reserved and reported by the trial judge. Oral argument was heard in January 1994, and the Court rendered its opinion in July 1994. The case arose out of a $500,000 settlement obtained by the Division from former trustees of the Fuller Trust. The trial judge's Reservation and Report raised issues regarding the Probate Court's jurisdiction to examine the former trustees' management and administration of the assets of the trust through charitable corporations, to impose additional liability beyond the amount obtained by the Attorney General, and to appoint successor trustees.

The Court ruled, as the Attorney General had argued, that the Probate Court should fill the trustee vacancies, and that the court has the power to require a full accounting from the former trustees and to consider further financial recovery from them. The Court also ruled, as urged by the Division, that:

[T]he court should consider further financial recovery from the trustees only if, after consideration of potential defenses and of the potential costs to the charity and risks to the viability of the intended charitable purpose, the judge concludes that further litigation, should it be necessary, will be likely to produce a recovery sufficiently above the $500,000 obtained by the Attorney General to render such further litigation appropriate to the furtherance of the charitable purpose.

Commonwealth v. Franklin Foundation

In December, the Supreme Judicial Court ruled, as argued by the Attorney General, that a $5,000,000 trust was distributable two hundred years after Benjamin Franklin's death pursuant to his will and codicil, is to be distributed now to the Commonwealth and the City of Boston, in accordance with the terms of Franklin's will. The dispute arose when Franklin Institute, a technical college in Boston created at the turn of the century with money distributed at that time pursuant to the first part of Franklin's bequest, claimed that it was entitled to the balance of the fund under a 1958 legislative enactment which sought to terminate the trust and distribute the fund to the Institute. The Supreme Judicial Court had found this statute ineffective in a 1960 case. The Institute contended that since the statute had never been repealed, it should now be given effect to require distribution to the Institute.

In a brief filed in July and in oral argument in November, the Attorney General, acting to ensure the due application of charitable funds, and on behalf of the Commonwealth and the City of Boston as named beneficiaries of the Franklin codicil, maintained that the 1958 enactment had no present applicability.

The Supreme Judicial Court agreed with the Attorney General's position.

Wigglesworth, et al, Trustees under Will of Roxana C. Cowles v. Cowles, et al

In May, the Division argued to the Appeals Court that the attempts of the heirs of Roxana Cowles to terminate the charitable trust under her will should be rejected, because the right of reverter in favor of the heirs had not been triggered. Instead, the trustees had properly carried out the dominant intent of the testatrix in building and operating the Stephen Caldwell Memorial Convalescent Home in Ipswich.

The Attorney General further argued that the Probate Court had correctly exercised its authority to ratify, under the doctrines of deviation or cy pres, past actions of the trustees in razing and replacing the dwelling house of the testatrix, forming a corporation to carry out the trust purposes, and changing corporate articles of organization in order to qualify for tax-exempt status. As a charitable trust, the Cowles Trust is to be liberally construed and upheld if at all possible. The Attorney General also argued that the claims of the heirs were barred by collateral estoppel, laches, and the provisions of G.L. c.260, section 31A. The Appeals Court has not yet handed down its decision.

Attorney General v. Schlichte, et al, Trustees under Will of James N. Abbott, Jr.

In December, the Division filed suit against the trustees of a North Shore charitable trust, seeking a declaration by the Court that the trustees had violated their trust by improperly excluding students from the Town of Essex and others from eligibility for scholarships from the trust, and further seeking removal of the trustees. The trust, created to help underwrite higher education for students domiciled and resident in Gloucester, Rockport, and Essex, requires that applicants demonstrate their willingness and intention to return to Cape Ann after their schooling to contribute their talents and training to the area. The trustees, however, maintained that only graduates of Gloucester and Rockport High Schools ere eligible, a requirement not found in the trust. The Division took enforcement action when the trustees refused to alter their position.

In April, the Essex County Probate Court granted the Attorney General's request for a preliminary injunction requiring the trustees to provide notice of the availability of scholarships to all potentially eligible applicants, pending resolution of the case. The trustees gave notice by publication, as required by the Court's order, and applications filed pursuant to the notice are currently being held in escrow.

Bradford, Rector of the Parish of All Saints, et als. v. Attorney General

In October, governing officials of this church filed suit against the Attorney General, seeking a declaration as to the interpretation of a particular donated fund held by the church, and as to the authority of the Attorney General to investigate expenditures from the fund. The Attorney General filed a counterclaim, alleging that church officials had made expenditures from the fund for purposes other than those specified in the will which established the fund, and that the court should order an accounting and restitution, and should appoint new trustees of the fund. The case is pending.

Trustees of Russell Trust and Trustees of Stearns Trust v. Attorney General

The Division identified some problem areas in the administration of the Stearns and Russell trusts created for the poor of Lawrence, which required modification of trust instruments and trustee procedures. The Attorney General and the trustees jointly sought to remedy these problems via documents presented to the probate court securing approval for increasing the number of trustees from three to five, with the two newly appointed trustees being individuals who are conversant with the Latino community; the creation of a new grant application procedure which is designed to make applicants and trustees aware of the most appropriate beneficiaries of the two different trusts; and a review process whereby the Division reviewed the 1993 and 1994 grants. By agreement, changes were made to the 1993 grants so that the grants reflected the new approach to grant-making, and were appropriate under each trust.

Malden Public Library v. Attorney General

The Division reviewed and assented to the petition for reasonable deviation in this case in which art subject to trust restrictions was to be auctioned and proceeds used to refurbish library and complete capital campaign for new, handicapped accessible library.

Estate of Walter Wilson

The Division reviewed and assented to the Amended First and Final Accounts of the Executor of this estate probated in New York which made a gift to the Commonwealth of over 400 acres of land in western Massachusetts.

Spring, et al, Trustees of the Trust under Will of Hervey A. Hanscom v. Nasson College, et al.

In March, the Middlesex Probate Court ruled that the specific gift to Nasson College under the Hanscom Trust failed because it was impossible for Nasson College to carry out the intent of the gift. Nasson College, pro se, filed a notice of appeal, which the plaintiff trustees moved to dismiss in June for failure to perfect the appeal. The Court will now consider the issue of general charitable intent and applicability of the doctrine of

cy pres. The Division will continue to take an active role in the case.

Seamen's Widow and Orphan Association, Inc. v. Attorney General

The Division reviewed, negotiated and assented to SWOA's cy pres petition to broaden the class of eligible beneficiaries of this organization founded in 1833 to assist widows and orphans of Salem area seamen, when seamen and their families constituted nearly the whole community, to assist any Salem area persons in need (while still giving priority to original beneficiaries when possible), thereby facilitating full utilization of the organization's charitable assets.

CHARITABLE CORPORATIONS

The assets of all charitable corporations and other public charities are considered by law to be held by the charitable organization for charitable purposes. Under common law and G.L. c.12, §8, the Attorney General represents the public's interest in the proper use of these assets.

Trustees of Boston University

In December, the Attorney General obtained an agreement with Boston University to make a number of fundamental changes in the University's corporate governance practices. In the agreement, the University agreed to implement a series of reforms in the areas of:

* trustee selection,
* executive compensation,
* conflicts of interest and related party transactions,
* oversight and monitoring by the Board of Trustees,
* public filings with the Attorney General's Public Charities Division.

The agreement, which will be in effect until January 1, 1999, is a public document.

The investigation and review by the Public Charities Division focused on the overall responsibilities of the trustees to oversee and to monitor the activities of the University. Under the agreement, new trustees are to be nominated by a committee at least one-third of whose members are selected by the University's Alumni Association and may not be University trustees or employees. The agreement applies a term limit of eight years to the office of Chairman of the Board of Trustees. If, at any one time, 40 percent or more of the trustees have served more than 12 years on the Board, a term limit will apply until the number of trustees serving more than 12 years has been reduced to below 40 percent.

The agreement puts particular emphasis on the issue of trustee oversight of executive compensation and of University transactions with anyone related to a trustee, committee member

or executive officer. The agreement requires the University to provide full information to trustees regarding the activities of Board committees and subcommittees, and requires approval by the Board of Trustees, not merely by a board committee, of the compensation of the University's President and other top officials and of any related party transactions. Under the agreement, related party transactions are prohibited except where the trustee discloses his or her interest to the Board, and the Board, without the trustee's participation, approves the transaction at a meeting of the full Board and determines that it is in the best interests of the University.

In connection with the agreement, the University also filed amended annual financial reports with the Attorney General's Division of Public Charities. The amended reports list several corrections in the reporting of executive compensation and related party transactions for the University's fiscal years 1987 through 1992. The University agreed to provide timely and complete compliance with reporting requirements in the future.

Commonwealth v. Peaceful Movement Committee, Inc.

In December, the Division, together with the Department of Public Health, obtained a court order placing Peaceful Movement Committee, Inc. (PMC), a Dorchester state-funded addiction-treatment services clinic, in temporary receivership to ensure that its programs were properly conducted. This action followed a joint investigation by the Division and DPH's Bureau of Substance Abuse Services. PMC services include methadone treatment, drug counseling youth intervention programs, driver alcohol education and domestic violence prevention.

The order temporarily suspends PMC's management until a lawsuit filed by PMC's board is resolved and directs the temporary receiver to continue programs, evaluate management, staffing and accounting practices, and make recommendations as to whether PMC should become affiliated with another charity in order to best maintain programs now conducted by PMC.

Commonwealth v. Students Against Driving Drunk, Inc.

The Board of Directors of S.A.D.D., a national organization of 6,000,000 members headquartered in Marlborough, agreed to make extensive reforms to its corporate governance practices, including agreeing to rescind the remaining $1,000,000 of a $1,400,000 consulting contract and retirement benefits previously awarded to the charity's former executive director and founder, Robert Anastas. The "golden parachute" threatened to undermine the charity's financial stability.

The Letter of Agreement, which eliminated the present need for a lawsuit by the Division against the Board of Directors and is a public document, also provides that any future contract between S.A.D.D. and Anastas will be subject to review by the Division and that the Board will be increased from 10 to 15 members, with 3 seats reserved for regional coordinators. The Board also

pledged to carry out their duty to provide enhanced oversight of the fiscal management of S.A.D.D.

Russell Doll and Toy Museum v. Attorney General

The Division investigated, pursuant to a petition to dissolve, into whether the founder of the museum improperly auctioned museum property for his private benefit. After resolution of the issues, the petition to dissolve was allowed by the Supreme Judicial Court.

Hospital Transactions

The Division reviewed several major transactions involving nonprofit health care providers to ensure that charities law considerations were addressed appropriately. These included:

Massachusetts General Hospital & Brigham and Women's Hospital: the Division reviewed the proposed affiliation between these two hospital systems. The Division concluded that court approval was not required under charities law.

Hahnemann Hospital (Brighton): the Division reviewed proposed sale of assets, and negotiated and assented to court petition. Court approval was granted.

Glover Memorial Hospital (Needham): the Division reviewed proposed sale of assets to another nonprofit hospital, and negotiated and assented to court petition. Court approval was granted.

Beverly Hospital and Cape Ann Health Systems: the Division reviewed proposed affiliation between these two hospital systems. The Division concluded that court approval was not required.

Symmes Hospital and Lahey Clinic: the Division reviewed sale of assets by nonprofit hospital to joint venture of another nonprofit hospital and a for-profit business. We negotiated issues affecting the structure of the transaction and the form of a court petition, to which we assented. Court approval was granted.

Participation in Attorney General's Health Care Task Force

Members of the Division were actively involved in the Attorney General's Health Care Task Force. The Division co-chaired the development of the Attorney General's Community Benefits Guidelines for Nonprofit Acute Care Hospitals, and participated in other activities of the Task Force.

Dissolutions

In order to cease corporate existence, charitable corporations must dissolve through a proceeding in the Supreme Judicial Court. To enforce the public's interest in the disposition of charitable assets, the Attorney General is a party to all voluntary dissolutions of charitable corporations under G.L. c.180, §11A. After review, negotiation of necessary modifications, and assent

by the Division, the pleadings are filed by the dissolving charity in the Supreme Judicial Court.

During the reporting year, the Division assented to 109 final judgments dissolving charitable corporations pursuant to section 11A. Also, the Division filed an Omnibus Petition with the Supreme Judicial Court to dissolve a group of 40 inactive charitable corporations under G.L. c.180, §11B.

Review of Asset Dispositions

Under amendments to the non-profit corporations act, which took effect in April 1990, a charitable corporation must give 30 days advance written notice to the Attorney General before making a sale or other disposition of all or substantially all of the charity's assets if the disposition involves or will result in a material change in the nature of the activities conducted by the corporation. G.L. c.180, §8A(c). During the year, the Division reviewed 16 such dispositions.

PUBLIC EDUCATION INITIATIVES

In partnership with the Attorney General's Advisory Committee on Public Charities, the Division undertook a continuing public education campaign regarding charitable giving and charity stewardship.

Giving Season Public Education Campaign

In November, the third annual "ATTORNEY GENERAL'S REPORT ON CHARITABLE FUNDRAISING" was published as part of the Attorney General's annual "GIVING SEASON" public education campaign. Timed to coincide with charitable appeals during the holiday season, and in cooperation with the "Give But Give Wisely" education program conducted by the Better Business Bureau and other charitable organizations, this campaign is a long-term effort to inform individuals and businesses about the donating process and how to make sure that their contributions are put to the best possible use.

The 34-page report explains how charitable fundraising works, including the role that commercial solicitors play, and analyzes the financial reports of 158 fundraising campaigns by solicitors. The report concludes that for the campaigns analyzed charities received an average of 28.9% from the total amount raised on their behalf by professional solicitors. The report also points out that charities use fundraising not only to raise money, but as a means to gain name recognition, educate the public about their causes and the services they provide, and to increase their membership and volunteer base. While under U.S. Supreme Court rulings the state cannot set limits on the amount of contributions retained by commercial fundraisers, Massachusetts does have laws prohibiting deceptive fundraising, which are enforced by the Division.

Other related publications available from the Division include: "Donating Do's and Don'ts", "How To Give But Give Wisely", and "Attorney General's Guide for Charities Who Fund-raise from the Public".

Statewide Conference: "Nonprofit Boards: Dilemmas in Doing the Right Thing"

On April 7, 1994, the Attorney General sponsored the second annual statewide educational conference for members of charity boards. Entitled "Nonprofit Boards: Dilemmas in Doing the Right Thing", the conference was attended by over 600 participants from more than 120 cities and towns representing a wide range of organizations from the smallest volunteer charities to the largest hospitals and universities in the state.

After a keynote address by the Attorney General on the role of the Attorney General in regulation and enforcement in the nonprofit sector and educational initiatives of the Attorney General to respond to problems faced by nonprofit board members, two panels of speakers discussed "Building and Sustaining an Effective Board", including the topics Board Membership and Structure, Duty to Govern, and Conflict of Interests, and "More Tough Dilemmas", including the topics Balance of Power Between Board and Staff, Compensation and Evaluation, Staff Hiring, Sustaining and Firing.

Guide for Board Members of Charitable Organizations

The Division distributed widely "The Attorney General's Guide for Board Members of Charitable Organizations", containing recommendations in key areas of charity stewardship. Developed with assistance from the Attorney General's Advisory Committee on Public Charities and initially issued in June 1993, the Guide is intended to help board members of charitable organizations in the exercise of their fiduciary duties. In 1994 the Division supplemented the Guide with an extensive Board Member's Packet of information.

Conference and Professional Education Presentations and Publications

As part of the Division's ongoing public education effort, the Director of the Division and other Assistant Attorneys General in the Division spoke to numerous charitable groups and served on several continuing professional education panels throughout the year, including the Human Service Forum (Springfield), Assoc. of Independent Schools, Assoc. of Mass. Homes for the Aging, New Eng. Museum Assoc., Mass. Human Service Providers Conference, Mass. Continuing Legal Educ., Mass. Bar Assoc., Boston Bar Assoc., Mass. Society of CPAs.

DIVISION ADMINISTRATION AND STATISTICS

Enforcement of laws requiring accountability by public charities is central to Division responsibilities with respect to charitable funds. With the exception of religious organizations and certain federally chartered organizations, all public charities must register with the Division and all registered charities must submit annual financial reports. The registrations and financial reports are public records and public viewing files are maintained. The Division responded to over 4,947 requests to view files in the past fiscal year and, in response, approximately 11,012 files were pulled.

Charitable Organizations: Registration and Enforcement

From July 1, 1993 through June 30, 1994, the Division processed approximately 12,373 annual financial reports and annual filing fees totaled $1,082,575.00. During this period, 1,078 new organizations were reviewed, determined to be charitable, and registered. Each was sent the Division's packet of information about the Division's registration and filing requirements.

As part of an ongoing compliance program, the Division contacted approximately 9,059 charities whose annual filings were deficient or delinquent to rectify filing deficiencies.

Issuance of Certificates to Charities Who Fundraise

Under G.L. c. 68, sec. 19, every charitable organization which intends to solicit funds from the public, except religious organizations, must apply to the Division for a solicitation certificate before engaging in fundraising. Upon receipt, the Division reviews certificate applications for compliance with statutory requirements. Unless there is a deficiency in the application, all certificates are issued within a 10-day statutory period.

This year, 10,623 certificates were received and processed.

Registration of Professional Solicitors and Fundraising Counsel

Under §§22 and 24 of G.L. c.68, all persons acting as professional solicitors, professional fundraising counsel, or commercial co-venturers in conjunction with soliciting charitable organizations must register annually with the Division. Solicitors and commercial co-venturers must also file a surety bond in the amount of $10,000.00. All fundraisers must also file with the Division a copy of each fundraising contract which they sign with any charitable organization, and solicitors must later file a financial return regarding each fundraising campaign.

During the fiscal year ending June 30, 1994, a total of 211 registrations were received and approved, resulting in $45,300.00

in fees to the Commonwealth. Registrations for calendar 1994 were received from 75 solicitors, 100 fund-raising counsel, and 14 commercial co-venturers (such registrations are required to be filed on a calendar year basis pursuant to G.L.c. 68, section 24).

Wills, Trusts, and Other Probate Matters

During the past fiscal year, the Division received 1,045 probate citations; received and reviewed 1,371 new wills, 1,093 of which contained charitable bequests; and received and reviewed 867 interim accounts for executors and trustees, as well as 778 final accounts. In addition, the Division received 237 other petitions and citations and 581 miscellaneous probate matters in new or existing probate cases, including 81 petitions for license to sell real estate and over 20 petitions under G.L. c.203, sec. 25 to terminate trusts too small to be administered economically and distribute the trust property to the beneficiary, resulting in the availability of more income to the charitable beneficiaries of such trusts by reason of elimination of administrative costs. After review and negotiation, a total of 640 assents were issued in all categories of probate matters.

Public Administration

The Division represents the State Treasurer in the public administration of intestate estates which escheat to the Commonwealth because the decedent had no heirs. During the year, the Division reorganized and updated procedures and the over 200 case files currently open. This was done in cooperation with the Treasury Department of the Commonwealth and the 48 Public Administrators currently serving in the several counties of the Commonwealth. Pursuant to these procedures, Public Administrators are to send escheated funds directly to the Treasury Department, Unclaimed Property Division. In addition, the Division opened files on 95 new intestate estates, 168 estates were closed, and 8 other miscellaneous public administration matters were handled.

Form PC Revision

With the assistance of a working group from the Attorney General's Public Charities Advisory Committee, the Division revised the reporting form utilized annually by public charities - the Form PC. In addition to clarifications to make the form and the reported information more easily used by charities and the public, for the first time the Form PC asks charities to report all assets held not only by the filing charity but also by any related organization.

TABLE I: Money Recovered
For The Commonwealth Treasury

A. Charitable Registrations, Certificate Fees, and Fundraiser Registrations	$1,127,875.00
B. Other fees, requests for copies, requests for computer information	$ 27,840.00

REGULATED INDUSTRIES DIVISION

The Regulated Industries Division represents consumer interests in regard to two specific industries: insurance and public utilities. Although some of the Division's work is carried on in state and federal courts, most is performed before administrative regulatory bodies: the Massachusetts Department of Public Utilities, the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Massachusetts Division of Insurance. In many of matters, particularly public utility rate cases, the Division is the only active participant advocating on behalf of consumers.

INSURANCE

The division's representation of consumer interests in insurance matters is divided into several distinct categories. The division intervenes in both automobile and health insurance rate setting proceedings. The division also performs a consumer protection/insurance laws enforcement function: through the Office's consumer hotline and direct mail and telephone communications, the division receives many consumer questions and complaints. Through mediation, negotiation and, if necessary, litigation , the division obtains both restitution and injunctive relief for insurance consumers. Finally, the division engages in non-case related work to advance insurance consumer interests, including legislative, regulatory, educational, and other outreach

RATE CASES

1994 Private Passenger Automobile Insurance Rates:

On August 12, 1993, the Automobile Insurance Bureau of Massachusetts ("AIR") filed with the Division of Insurance its recommendation concerning the 1994 private passenger automobile insurance rates. The industry requested a 5.9 percent increase over the 1993 rates. If approved, this request would have been equivalent to an average increase in auto insurance premiums for Massachusetts drivers of $52.00 per car or 171 million dollars overall. On behalf of Massachusetts consumers the Division challenged the requested increase and recommended an increase of 1.7%. After several days of evidentiary hearings and responsive briefs, filed with the Division of Insurance, the commissioner issued a decision on December 15, 1993, approving a 2.9 percent increase over 1993 premiums. The Division's intervention resulted in savings to Massachusetts consumers of $89 million or $26.00 per car.

1995 Private Passenger Automobile Insurance:

Proceedings concerning 1995 automobile insurance rates began in April of 1994 with the annual hearing called by the Commissioner to determine whether it was necessary that the rates for 1995 be fixed and established in accordance with G.L. C. 175 113B. The Division participated in these hearings and

recommended that market conditions to require that rates continue to be set in like fashion.

1994 Blue Cross and Blue Shield of Massachusetts Non-Group Health Insurance Rates:

In April of 1993, BCBS sought a 23.6 percent average increase in the premium rates for its non-group health insurance. Evidentiary hearings began in May, with the division sponsoring the testimony of two experts. Hearings continued through June 1993 and a brief was filed with the Division in July. On July 27, 1993, the commissioner issued her decision reducing the average rate increase to 18.55, to be effective September 1, 1993. The Commissioner also refused to allow Blue Cross and Blue Shield to base the premiums paid by group conversion subscribers on their own experience, rather than on the experience of health statement subscribers. The combined effect of these rulings resulted in savings to Massachusetts non-group consumers of an estimated $20 million.

1994 Blue Cross and Blue Shield of Massachusetts MEDEX Insurance Rates.

In August, 1993, BCSS sought a proposed 10% increase in premium rates for Medicare supplement insurance, MEDEX, which is purchased by seniors to cover deductibles, co-payments and services not covered under the Medicare program. On behalf of MEDEX subscribers, Division participated in hearings before the Division of Insurance challenging the rate increase and cost projections in the BCBS filing. Subsequent to the Division's intervention, agreement was reached in which BCBS agreed to an average rate increase of 3% for 1994, and also agreed not to bill retroactively the 1993 rate increase which had not been charged to subscribers for the first quarter of 1993. The total saving to MEDEX subscribers as a result of this agreement was approximately $30 million.

FAIR's Request for Rate Increase:

In fiscal year 1994, the Division concluded its investigation into the availability of property and casualty insurance in urban and low income areas. The investigation showed that, as a general rule, the only affordable homeowner insurance available to inner city residents is written by the FAIR plan. The FAIR plan is a residual market, established in 1968 to ensure the availability of basic property insurance for those unable to secure coverage through the private sector. Its losses are pro-rated among property and casualty carriers in accordance with their Massachusetts market share. In response to FAIR's request to the Division of Insurance to approve a rate increase, members of the Division advised the Division of Insurance that any rate increase would require a rate regulation process in which the Office of the Attorney, General would intervene on behalf of consumers. The intervention would, involve the strict scrutiny of FAIR's rates in much the same way that other rate requests are reviewed. Discussions with the State Rating Bureau and with the

FAIR plan regarding the requested increase were ongoing at the end of the fiscal year.

Consumer Protection/Enforcement:

The division also engaged in non-rate case related insurance work during fiscal year 1994 that involved consumer protection issues and/or enforcement of the Commonwealth's insurance laws. Representative matters include:

LEGAL ACTIONS

Commonwealth vs. Retired Home Owners, Inc. e t al.:

The Division enjoined the marketing and sale of an unlicensed home care insurance product by a California Corporation, and secured full restitution ($7,045 each) for all Massachusetts elder citizens who had purchased membership in RHO and its home-care product. Subsequently, the California Attorney Attorney's Office filed suit against RHO which thereafter filed for bankruptcy. Only Massachusetts consumers, however, received refunds of monies paid to RHO.

Commonwealth vs. Associated Chiropractic Services, Inc. et al:

The Division, in cooperation with the Consumer Protection and Antitrust Division, filed this suit in April of 1994 alleging that the defendants had violated the consumer protection statute through their unfair and deceptive collection campaign against hundreds of former patients. The defendants have been enjoined preliminary from further collection activities pending final resolution of the action. In addition, the Division filed a Complaint for Civil Contempt requesting the court to order the defendants to comply with the preliminary injunction, previously issued, by producing all documents and files relating to former patients.

Commonwealth v. Poitras and the Massachusetts Lobstermen's Association:

In April of 1990, this office filed a complaint in Suffolk Superior Court against the MLA and other defendants alleging that the defendants, without being duly licensed, marketed and sold an accident and health insurance plan to fishermen and others in Massachusetts; misrepresented that the plan was subject to ERISA, and refused to pay valid claims of approximately $3 million. On August 19, 1993 the Superior Court ruled that the MLA health insurance plan is not subject to ERISA; that the courts of Massachusetts are not preempted from considering the matter; and that the Attorney General is not preempted from seeking to apply state insurance law in this case. A memorandum of law on the issue primary jurisdiction was filed, at the request of the Court, in September, 1993. A Court ruling on this issue is still pending.

Commonwealth v. Maura Cronin, d.b.a. Claddagh Home Care:

The Division obtained a preliminary injunction against Maura Cronin, d.b.a. Claddah Home Health Care ("Claddagh'), restraining her from engaging in unfair and deceptive acts and practices in the operation of Claddagh. Claddagh provides and arranges to provide home health care workers to predominately elderly consumers. The preliminary injunction was obtained pursuant to several complaints from consumers that they had paid Ms. Cronin for home health workers and had not received any services. In addition, several complaints were received from home health workers who had provides services to Claddagh clients and had not been paid by Claddagh.

ASSURANCES OF DISCONTINUANCE

The Division entered into Assurances of Discontinuance with four insurance agents during fiscal year 1994 which resulted in restitution to Massachusetts consumers of approximately $165,000,00.

Johansson, Clark, and Gallo:

Following an investigation by the Division, three insurance agents entered into Assurances of Discontinuance in which they agreed to refrain from soliciting and selling unauthorized insurance products, particularly those of Amalgamated American Employees Association, Amalgamated American Employees Association Benefit Fund, American Business League, United Healthcare Benefit Trust, and United Association of Small Business, and to refrain from representing such plans as ERISA plans. Pursuant to the Assurances, Theodore Johansson, Steven Clark, and Ernest Gallo, agreed, at their clients' option, either to refund the premiums paid or to pay medical claims which were unpaid as a result of their actions in selling an unauthorized health insurance plans. The agents also agreed to pay the Commonwealth the costs of the investigation.

Joyal

Donald Joyal, a licensed insurance agent, entered into an Assurance of Discontinuance with the Attorney General in which he agreed to refrain from soliciting prospective purchases of life insurance by misrepresenting, inter alia, whole life insurance as a "savings plan" or "investment plan". Joyal also agreed to refund the consumer with premiums collected.

PUBLIC ADVISORY

USA For Healthcare:

The Division, following several consumer inquiries, conducted an investigation into the activities Of USA for Healthcare ("USA"). The investigation revealed that USA was not licensed as an insurer or as an HMO in the Commonwealth, and was not a fully insured ERISA covered plan (Employee Retirement Income Security Act Of 1974). Since Massachusetts insurance law imposes liability for payment of unpaid claims on insurance agents who

sell unauthorized health insurance plans, the Division issued an advisory to approximately 130 insurance agents advising them that USA was neither a licensed insurance company nor a fully insured ERISA plan and also advising them of their potential liability. This advisory had the intended effect of halting the sale of unlicensed products in the commonwealth while the Division continues its investigation and negotiations with USA regarding outstanding unpaid claims of Massachusetts consumers.

MISCELLANEOUS ACTIONS

PrePaid Legal Services & American Association of Senior Citizens:

Following up on an investigation and Assurance of Discontinuance obtained in a prior fiscal year against a senior citizen organization, American Association of Senior citizens (AASC) which sold unlicensed legal insurance Through PrePaid Legal Services. The Division participated in a multistate Attorneys General Task Force which was formed to coordinate action against Prepaid. Negotiations with PrePaid were concluded. They provide for reimbursement to consumers in Massachusetts and other states for the portion of AASC membership fee which was paid to Prepaid. Restitution to consumers is anticipated to be approximately $30,000.00 with an additional $5,000.00 to be paid to the Local Consumer Fund.

FAILURE TO REMIT CASES

Workers Health Fraud Task Force.

As a result of a significant number of complaints received from current and former employees regarding the failure of their employers to maintain health insurance coverage, frequently instances in which the employer withheld funds or accepted COBRA payments, the Attorney General placed high priority on proceeding against employers who engaged in such behavior. Members of the Division, along with the Chief Prosecutor and Assistant Attorneys General in the Public Protection Bureau, aided by the civil Investigation Division, formed the Workers Health Fraud Task Force. The members of the Task Force have reviewed and investigated more that twenty employers. At the end of the fiscal year, the Task Force anticipated the imminent issue of several grand jury subpoenas, initiation of civil action against several other employers and agreements with yet other employers to give restitution to employees and former employers.

Notification of Cancellation of Group Health Insurance.

Much of the harm suffered by employees without health insurance coverage is exacerbated by the fact that they receive no notice of the cancellation of their coverage. Carriers provide notice of cancellation only to employers who, in many instances, do not notify employees. Employees, unaware that they have no coverage, continue to incur medical costs. The Division informed BC/BS of these notification concerns and discussed possible solutions to this problem with them. Partly because of these discussions, beginning April 1, 1994, BC/BS agreed to

provide notice to employees when their group coverage has been canceled. Members of the Division are currently engaged in discussions with other carriers suggesting that they also provide notice of cancellation to employees as well as to employers.

Prosecutor's Rotation:

A member of the Division spent four months of fiscal 1994 in Lawrence District court as a prosecutor with the Essex county District Attorney's Office as part of Attorney General Scott Harshbarger's Urban Violence Strike Force. The Division member assisted the District Attorney's Office by handling a full criminal case load including trials, motions to suppress, arraignments, and other duties.

CONSUMER COMPLAINTS

After investigation and intervention, Assistant Attorneys General in the, Division were instrumental in resolving several matters on behalf of consumers with an estimated value to consumers of approximately million, For example, Houston Casualty Co: an excess insurer, agreed to extend the time in which the insured could replace a building destroyed by fire and to process a claim previously determined by an order of reference; John Hancock: rescinded a policy allegedly issued without the knowledge of the consumer, canceled an allegedly unauthorized policy loan, and refunded the premiums paid plus interest; Prudential Life Insurance Company of America agreed to reinstate old policies and cancel new policies issued as a result of agent churning; John Hancock also paid the cash surrender value with interest to a consumer who had surrendered her life policy six months prior to our involvement; Cigna paid an outstanding bill incurred several years ago under a college student's policy thus relieving the former student from the cost of defending a collection action by the hospital; Central Massachusetts Health Care (CMHC) agreed to expedite the authorization for a bone marrow transplant for an AIDS patient; Pilgrim Health Care reversed a decision and agreed to provide infertility treatment in accordance with the law and its policy provisions. HMO Blue , after first denying access to treatment, changed its position and agree to permit a severely brain-damaged infant to obtain treatment out of panel from a particular physician and specialty hospital. In addition to the many consumer complaints which the Division was able to resolve on behalf of consumers, members of the Division explained and worked with many consumers to guide then in such matters as; understanding the intricacies of various entitlement programs and the interplay between them; the billing practices of their health insurers; continuation of health insurance coverage following termination of employment or following divorce and the like. While no monetary consumer benefit can be placed on these activities, they provide a valuable service to Massachusetts consumers, many of whom are elderly or who have no other sources to turn to.

Consumer Hot-Line and Paralegal Resolution of Inquiries and Complaints:

During the fiscal year, the division received and responded to more than 600 telephone inquiries, an increase of 50% over the number of calls in the prior fiscal year; 325 written complaints, an increase of 100% over the number received in the prior fiscal year. An estimated $171,000 in refunds and benefits were received by consumers through the intervention of the paralegals and volunteer interns, an increase of approximately 50% over the prior fiscal year.

OTHER ACTIVITIES

Legislative Activities

Private Passenger Automobile Insurance Reform:

During the 1994 fiscal year, various legislative initiatives to reform the Massachusetts private passenger automobile insurance market were the subject of intense debate in the legislature. Foremost among the different reform proposals was Bill S1548, whose salient feature was the elimination of the current partial no-fault system in favor of a pure tort system. The Massachusetts Academy of Trial Attorneys suggested that the elimination of no-fault would result in reduced premium costs to the consumer whereas the automobile insurance industry suggested that the elimination would result in higher premiums, with possibly less insurance coverage. The Chair of the House Insurance Committee, Francis Mara, requested the Attorney General to comment on the proposed bill and to provide an objective analysis. The Attorney General engaged the firm of Milliman & Robertson to conduct an actuarial analysis. Members of the Division worked closely with Milliman & Robertson, providing information and analysis on the Massachusetts experience and the Massachusetts laws regarding automobile insurance.

Non-Group Health Insurance Reform:

The Division, as part of the Attorney General's Health Care Task Force, continued its efforts to effectuate health insurance reform. Members of the Division drafted legislation to reform the non-group insurance market. The legislation was sponsored by Representative Carmen Buell, the Chair of the General Court, Committee on Health Care, initially in 1992 and again in 1993. This legislation continues the efforts of the Non-Group Health insurance Reform Commission, convened by the Attorney General in 1992, to address both the affordability and availability of non-group insurance.

General Health Care Reform:

In addition to the draft legislation for non-group insurance reform, the Division, as part to the Attorney General's Health Insurance Legislative Working Group, focused on drafting legislation to improve the purchasing power of Massachusetts' consumers. The Legislative working Group was made up of representatives of the health care industry, including insurers, HMOs, hospitals, physicians, associations managing group plans and other interested parties. The Group met to consider non-group reform proposals and health alliance proposals. As a result of this process, the division assisted the General Court's Committee on Health Care in drafting its comprehensive health care reform legislation which remains before the Committee awaiting completion of federal health care reform efforts. The division will continue to lend its expertise to the, committee on Health Care through additional legislative drafting and editing as well as offering its interpretation of other legislative proposals.

Medigap Reform:

As a continuation of its participation in the reform of the Medigap health insurance, the Division was actively involved in reviewing and advising the legislature on the Medigap reform legislation which was enacted in the 1994 legislative session.

Insurance Fraud Reform:

As part of the Attorney General's interest in reducing fraud in the health insurance market, members of the Division prepared draft legislation to strengthen the provisions of current legislation regarding fraudulent health insurance claims. In addition, members of the Division prepared opposition statements to proposed legislation which would weaken considerably the current legislation. The efforts of the Division resulted in the Governor's veto of the proposed legislation.

Regulatory Actions

Medigap

In April, 1994, the Division presented testimony at a public hearing convened to consider Division of Insurance's proposed regulations implementing M.G.L.C. 176k, the Medicare supplement reform statute passed by the legislature in December, 1993. In its comments, the Division urged the Commissioner to regulate the rate setting process for HMOs who sell certain Medigap products and to maintain the consumer friendly prescription drug benefit provisions in current policies. Although the Commissioner did not issue final regulations by the close of the fiscal year, the regulations which finally issued were responsive to the Attorney General's concerns.

Board Membership

A member of the division sits as the Attorney General's designee on the Merit Rating Board which operates the Safe Driver insurance Program. During the fiscal year, the Division worked with other members of the Board to resolve favorably various audit issues raised by the state Auditor's Office.

Guest Speakers

Members of the Division made presentations to several organizations regarding insurance and financial exploitation of elderly. Members of the Division also participated in monthly discussions about the law with elementary students from Mission Hill as part of Bar Association's Partnership Among Lawyers and Students program. Some of these speaking engagements included presentations: at the Federal Reserve Bank in September, 1993, on the topic of Insurance as a Consumer Product; at the Jenks Center in Winchester in January, 1994, on Insurance and Seniors; at a Cable TV program sponsored by the Executive office of Elder Affairs and the Silver Haired Legislators in February, 1994, on Scams Against Seniors; at the Newton senior Citizen Center in May, 1994 on Insurance Issues of Concern to Consumers; at a training session for the Local Consumer Advocates (LCA) in April, 1994 on "What Constitutes Insurance", to assist the LCA's in recognizing insurance scams and identifying unauthorized insurance products; at continuing professional education programs for judges, attorneys, and human resource personnel in Natick and Boston in March, 1994, on legislation affecting health insurance for children; at a joint regional meeting of the National Association for Consumer Agency Administrators and American Association of Retired Persons (AARP) in April, 1994, on Protecting Elders from Financial Exploitation, at The Attorney General's Elder Task Force in May, 1994 on Insurance Issues for Elders; at a seminar sponsored by the Newton Library in June, 1994, on Long Term Care Insurance.

Publications:

Overview of Mandated Dependent Child Health care Coverage Legislation, by Virginia A. Hoefling - Professional Education Systems, Inc., March, 1994 and Family Law Year In Review '94 April, 1994

ESTIMATED SAVINGS TO CONSUMERS

Auto Rate Cases	$89,000,000
Health Insurance Rate Cases	$50,000,000
Consumer Insurance Matters	$1,693,000
Consumer Hotline	$171,000
Total	$140,864,000

PUBLIC UTILITIES

I. GENERAL RATE CASES

A. New England Telephone's proposed Alternative Form of Regulation, docket DPU 94-50.

On April 14, 1994, NET filed with the Department of Public Utilities ("DPU or the "Department") a petition for a new form of regulation known as "Price caps". This case is important because it will likely change the DPU'S method of regulation of NET, with possible harm to captive ratepayers in Massachusetts if certain protections are not ordered.

Under the Company's proposed alternative regulation plan ("Plan"), residential local rates would be capped at the current level for seven years. However, the Plan allows NET to raise its other monopoly rates every year based on the Consumer Price Index, while lowering competitive rates. NET would in all probability receive an annual increase in overall rates in each of the next 10 years. This translates into an annual revenue increase to NET in the range of $1.7 billion to $2.1 billion.

On June 14, 1994, the Department denied the Attorney General's motion to dismiss absent a full rate review, finding that a rate case was not appropriate at this time because NET's price caps proposal was not a "general rate increase" under G.L.c. 159, 20. Thus, the Department limited this docket to reviewing the Company's price caps proposal and considering proposed changes to it.

B. Massachusetts Electric Company's ("MECo") Hazardous Waste Settlement, D.P.U. 93-194.

In December 1993, the DPU approved a settlement between the Attorney General, MECO and other parties on how MECO will pay for its hazardous waste clean-up costs (the total liability is estimated potentially at $40 to $225 million). The settlement split the clean-up cost between shareholders, ratepayers and insurers. Specifically, the settlement provided that shareholders will pay $30 million towards the clean-up costs over the next two years, while ratepayers will pay $3 million per year towards the cleanup costs. The settlement also benefited ratepayers with a $30 million rate reduction during the first year of the agreement and a rate moratorium on increases for the second year. In addition, large industrial customers were offered 5% discounts in return for extended (five year vs. one year) commitments to remain MECO customers, which should enhance MECo's ability to reduce future power costs.

C. Boston Gas Company, DPU 93-60.

In April, 1993, Boston Gas company petitioned for a November 1, $61M base rate increase. The Department accepted enough of the Attorney General's recommendations to reduce the increase by $22m, or over 35%. In addition, the Department agreed with the Attorney General that certain gas costs should be deferred.

Nevertheless, this decision had a significant impact on residential ratepayers; the $38.9M rate increase raised winter rates for heating and non-heating residential customers by 11.74% and 16.27%, respectively.

Also of note was the Department's change in treatment of profit margins from interruptible sales. To date, those margins have gone to firm ratepayers, but the Department here allowed the Company to keep 25% of the margins on interruptible and off-system sales (but not on capacity releases) after an $8M threshold is exceeded.

D. Colonial Gas Company, D.P.U. 93-78.

On April 15, 1993, Colonial petitioned the DPU for a general rate increase of about $10.8 million, or about 7.9% overall. The Company's proposal included disproportionate increases for the residential non-heating customers (in the Lowell service area the proposed increase was 16.0%, and on Cape Cod 14.9%.) In September 1993, the Department approved a settlement between the Attorney General and the Company, reducing the rate increase to $6.7 million or 4.9%, saving ratepayers $4.1 million or 38% of Colonial's requested increase. The settlement also substantially moderated the increases for residential customers.

E. Essex County Gas Company, D.P.U. 93-107.

In May 1993, Essex petitioned the Department of Public utilities for a $2.9 million or 7.25% general rate increase. In September, the Department approved a settlement between the Attorney General and the Company which reduced the proposed increase by $1.25m, or 42%. The allowed increase was $1,733,000, or 3.05%.

II. ELECTRIC GENERATING UNIT PERFORMANCE AND FUEL ADJUSTMENT REVIEWS

A. Western Massachusetts Electric Company, DPU 92-8C-A and DPU 93-SC-A, for the annual periods ending June 1, 1992 and 1993. During those periods, the Company's nuclear units had extended operating problems. The Department agreed with the Attorney General and rejected WMECols claim of a "qualified" privilege against disclosure of "self-critical', reviews requested by the Attorney General. The DPU found that no such privilege existed in Massachusetts law and refused to create any new privileges. WMECO appealed the DPU's decision to the Supreme Judicial Court. On a procedural remand, the DPU rejected the Company's claim and again compelled production of the documents. Shortly thereafter, the Company and the Attorney General agreed to a settlement of the case and (several previous pending reviews) which was approved by the DPU in May, 1994. The settlement provided: (1) a base rate refund for all customers of $8 million per year for 20 months beginning June 1, 1994 through January 31, 1996 ($13.3 million total); (2) a moratorium on base rate increases until at least February 1, 1996; and (3) large industrial customers were

offered 5% discounts in return for extended (five year vs. one year) commitments to remain WMECO customers, which should enhance WMECo's ability to reduce future power costs, with an additional agreement that residential customers will not be charged any revenue lost as a result of the discount. The cash refunds and non-cash components of the settlement produce $22 million worth of savings for ratepayers over the next 20 months.

B. Boston Edison Company, DPU 93-1A-A, generating unit performance review for the year ending October 1, 1992. In hearings, the Attorney General investigated a number of operating problems at BECo's major generating units. In January, 1994, the DPU ordered disallowance of replacement power costs associated with 18 outage days for the Pilgrim Nuclear Plant, and 19.4 outage days for Mystic 4.

C. Boston Edison Company, DPU 94-1A, generating unit performance review for the year ending October 1, 1993. BECO agreed at the outset to refund replacement power costs associated with three outage days at the Pilgrim Nuclear Power Plant. In a Final Brief filed in June, 1994, the Attorney General identified a number of additional instances in which BECO had been imprudent and asked the DPU to refund to BECo's ratepayers the replacement power costs resulting from those episodes of substandard performance. A decision by the DPU is pending.

D. Commonwealth Electric Company, DPU 94-3A.

In April, 1994, the Department approved a settlement by the Attorney General and ComElectric to stabilize Commonwealth's fuel charge over the next four years. The settlement caps the fuel charge rate at $0.065 per KWH for three years, 1994-1996 and at $0.067 per KWH for 1997. Any unrecovered fuel-related costs would be deferred during those four years, and then recovered, with interest over the subsequent six years. The Attorney General and the Company negotiated the proposal in response to the highly volatile nature of the Company's fuel charge which has ranged from $0.046 to $0.91 per KWH since 1990.

III. RESOURCE MANAGEMENT CASES

A. Nantucket Electric Company Cable Proposal, D.P.U. 93-137.

In June, 1994, The Department approved a settlement between the Attorney General, the Company and the conservation Law Foundation which would permit the building of an underwater electrical cable from Harwich to serve the Island's electric needs. The settlement improved upon the Company's original proposal by requiring sufficient backup power to ensure reliability and by encouraging DSM and windpower efforts.

B. Boston Edison Company Demand-Side Management

1. BECO DSM Settlement Board, DPU 88-28 et al. and DPU 91-233.

Pursuant to a 1989 settlement, the Demand-Side Management ("DSM") Settlement Board supervises a $1 Million fund supporting BECO's Conservation and Load Management. The Attorney General's representative on this Board serves as chairman. In addition, the Attorney General's Office manages the fund including the procurement of and payment for services. The Settlement Board has undertaken the first comprehensive study from a utility perspective of identifying cost-effective application of renewable energy resources to reduce customer energy and demand requirements. Potential cost-effective applications include photovoltaics, solar water heating and other passive solar options, small scale wind and hydro. Ultimately we anticipate that an implementation plan and policy recommendations will be developed by BECO and state agencies. The Settlement Board also is conducting the first of its kind research project for a utility in the Northeast in identifying risk mitigation values of demand side management resources. The research is expected to produce risk mitigating strategies to lower costs and future price risks.

2. BECO DSM Collaborative Programs.

The AG participated in a collaborative effort with Boston Edison in which it recommended and achieved the successful implementation of an HVAC retrofit pilot program. The program is the first of its kind in the country which takes advantage of a federal mandate to phase out CFCs as an opportunity to make efficiency improvements of approximately 30% in large commercial buildings. The energy savings occur during summer peak periods and thus reduce the need to build additional future capacity.

3. BECO DSM Monitoring & Evaluation Proceeding.

The Attorney General identified biases in Boston Edison's estimates of incentives which significantly overstated savings. The DPU adopted the Attorney General's recommendations regarding acceptable program evaluations. As a result the Company's incentives and lost base revenues were lowered with adjustments of approximately $1.1 million, reducing the Company's request by 15%.

C. BECO Integrated Resource Management, D.P.U. 94-49.

In March, 1994, BECO made its preliminary filing. The Attorney General participated in negotiations which have not yielded a settlement. Issues for litigation include Clean Air Act compliance, renewables, and level of DSM after 1994.

D. Massachusetts Electric Company, DPU 92-217-A.

In December 1993, the Department of Public Utilities approved a settlement of the 1994 and 1995 Conservation and Load Management ("C&LM") budgets by the Attorney General, the company and other parties. The approved settlement sets forth a C&LM budget level of $66.4 million for both 1994 and 1995.

E. Boston Gas Company, D.P.U. 93-108. In January 1994, the DPU agreed with the Attorney General and rejected Boston Gas' request to recover Demand-side Management ("DSM") incentives and lost margins for its residential and multifamily DSM programs. The DPU held that the Company first had to obtain approval, based on actual data under its "GEMS" method, of its evaluation and monitoring of DSM savings. This result is significant because the Department has previously held that the entire Massachusetts gas industry is authorized to utilize Boston Gas' GEMS results as a basis for each respective gas company's recovery of DSM lost margins, incentives and costs.

F. Bay State Gas Company Integrated Resource Plan, D.P.U. 93-129. The Company requested approval of long range forecast of sendout and supply plan, and DPU support for a proposed natural gas pipeline from Maine to Haverhill. The Attorney General argued on brief that the record did not show which was the most economic option for future supply at this point, and so the Department should not express support for any particular supply option in this case.

G. Gas Supply Purchase contracts:

In January-April, 1994, the Attorney General participated and presented witness testimony regarding proposed contracts for major gas supply purchases by the various Massachusetts natural gas companies. While the Attorney General did not urge the DPU to find imprudence, he did advocate ways in which the Department should give the gas companies incentives to minimize their supply costs. In addition, in the Bay State case, the DPU agreed with the Attorney General and rejected Bay State's request to recover $344,246 in outside services and $812,890 in expenses associated with its gas management system through the CGAC. The Attorney General argued that these costs belong more appropriately in base rates.

IV. GENERIC/RULEMAKING DOCKETS

Mergers and Acquisitions, DPU 93-167-A.

The DPU opened this investigation to determine whether changes were needed to permit mergers that would be "consistent with the public interest" as stated in G.L. c. 164, S 96. After comments were filed by the Attorney General and many Massachusetts utilities the DPU decided that it would not set a general policy but review each proposed merger on a case-by-case basis. The DPU determined that a company proposing a merger or acquisition must show that the costs or disadvantages of the transaction are accompanied by specific benefits to the ratepayers that warrant allowing the merger.

V. MISCELLANEOUS

A. Consideration of Electric Market Reform.

During the first of 1994, the Attorney General participated in a Task Force established by DOER commissioner Steve Remen. The purpose of the Task Force was to investigate possible ways to streamline state regulation of electricity markets in Massachusetts, including ways to introduce more incentive ratemaking and more market competition. Many proposals for increasing competition would cause monopoly customers to pay higher rates for at least several years (while competitive customers stand to benefit first from the introduction of competition.) Therefore, the Attorney General urged that any proposed changes be designed in a way that does not hurt captive customers by causing higher rates or leading to the loss of public goods currently enjoyed (e.g., reliable service cost effective DSM, low income rates, research and development). The final report of the Task Force was issued in June 1994.

B. BECO-MBTA Contract, D.P.U. 94-1A.

In 1993, BECO successfully bid to supply the MBTA's entire power needs, whereas previously the T had obtained its power from several electric companies. When BECO presented the proposed contract for review, the Attorney General discovered that the Company was proposing lower fuel charges for the T than for all other customers. In short, under its proposed fuel charge, BECO would be cross subsidizing the T's service with revenues collected from other customers. The Department allowed the contract, but denied BECo's request to recover such subsidies in the fuel charge.

C. New England Power v. MBTA at the FERC:

NEP, one of the companies which lost MBTA load to BECO, is seeking to charge the MBTA for "stranded investment". The Attorney General has intervened in this case which may have implications for electric retail competition.

D. Federal Trade commission meeting on packaging disclosure requirements for compact fluorescent bulbs.

In December 1993 and January 1994, the Attorney General provided written and verbal testimony expressing consumer protection concerns to both the FTC and at a subsequent meeting with the Consortium for Energy Efficiency ("CEE"). We are serving on a CEE subcommittee to make recommendations as part of CEE's campaign to promote residential and small commercial energy efficient lighting. The Attorney General wants to ensure that consumers and utility conservation programs are not frustrated by any possible lack of disclosure and/or misrepresentation of fact on Compact Fluorescent Lamp packaging.

CIVIL INVESTIGATION DIVISION

The Civil Investigation Division (CID) conducts investigations primarily for divisions within the Public Protection and Government Bureaus and, on occasion, for the Executive Bureau, Family and Community Crimes Bureau, or in connection with the Criminal Bureau.

The major duties of Division investigators are: locating and interviewing victims, witnesses, subjects and others; obtaining and reviewing documentary evidence from numerous sources including individuals, corporations, and federal, state, county and municipal agencies; conducting surveillance, background checks and asset checks; analyzing financial records and performing other forensic accounting functions; and testifying at Grand Jury and trial.

In fiscal year 1994, CID initiated 547 investigations in the following major areas:

PUBLIC PROTECTION BUREAU

Consumer Protection and Antitrust

Investigators continued to perform their traditional role by assisting the office in bringing G.L. c. 93A enforcement actions against businesses and individuals in major consumer areas such as automobiles, health spas, travel, mobile home parks, home improvement repair, retail sales, hearing aids, advance fee loan scams and insurance/investment scams affecting the elderly.

CID also initiated several investigations and surveys to determine industry compliance with existing laws in the provision of uncompensated health care services, sales of cigarettes and lottery tickets to minors and other areas.

CIVIL RIGHTS DIVISION

BIAS MOTIVATED AND OTHER CIVIL RIGHTS ACT CASES

The Civil Rights Division has continued to actively enforce the Massachusetts Civil Rights Act, which authorizes the Attorney General to seek injunctive relief when the exercise of legal rights is interfered with by threats, intimidation, or coercion. In fiscal year 1994, the Division continued to combat violence and discrimination by obtaining a total of thirteen injunctions against 36 defendants who had interfered with the rights of Massachusetts residents on the basis of race, color, national origin, sexual orientation, and gender and to protect the First Amendment rights of a reporter and a member of a School Committee to expressing their views on controversial racial matters within their community.

In what may be the first use of a civil rights statute in combating domestic violence, the Division obtained a precedent-setting preliminary injunction against a man who engaged in an alleged pattern of gender-based and hate-motivated threats, intimidation, and violence against four separate women over a three year period. Each woman is alleged to have been systematically deprived of her most basic rights through a pattern of verbal and physical abuse. Because the defendant was motivated by his alleged bias against women as a class, the Division argued that the abusive treatment of these women violated the Massachusetts Civil Rights Act. As a result of the injunction, any further threats or intimidation by the Defendant against women whom he is dating, could result in a substantial prison sentence.

In other significant cases, the Division obtained injunctions against four males who terrorized an elderly woman with Parkinson's disease and her Haitian-American visiting nurse. The Division also obtained criminal indictments against an alleged member of the White Youth League, a racist skinhead group, for violating a civil rights injunction obtained by the Division in 1991.

HOUSING DISCRIMINATION

The Attorney General's Civil Rights Division has acted on its commitment to ensuring fair housing by filing, prevailing at trial, or settling 32 cases of housing discrimination involving allegations of discrimination on the basis of race, familial status, marital status, receipt of a housing subsidy, gender, and sexual orientation.

The Division has intervened in ten separate housing discrimination suits pending before the Massachusetts Commission Against Discrimination. These cases involve ten separate real estate agents in the Brookline and Newton area who have allegedly engaged in a practice of steering tenants with young children

away from rental units with lead-based paint, thereby shielding landlords from the statutory obligation to delead rental units occupied by families with children under six years of age. By intervening in these cases, the Attorney General hopes to modify realtor practices, to educate tenants about the right to fair treatment in the housing market and to enlarge the pool of safe, affordable housing for families with children.

On March 15, 1993, a Single Justice of the Supreme Judicial Court issued a precedent-setting decision granting summary judgment in favor of the Attorney General's Office and the Town of Barnstable. The Single Justice ruled that Old King Highway Regional Historic District Commission had no authority to litigate a case which had effectively halted construction of a 36-unit affordable housing development for low income elderly individuals or families in Barnstable. The Court's holding that the chief executive of a city or town can control a town board's decision as to whether to challenge an affordable housing project in that city or town, will provide substantial protection against opposition to the construction of such projects statewide. On December 14, 1993 the Supreme Judicial Court affirmed this decision.

In the case of Commonwealth v. Desilets, the Commonwealth alleged that the defendants had discriminated against an unmarried couple by refusing to rent an apartment to them based upon their marital status. The Attorney General filed an appeal to overturn a Superior Court judgment which exempted the defendants from compliance with the fair housing laws, based upon defendants' claim that their religious convictions prevented them from renting to the couple.

The Attorney General's Office filed an appeal to overturn the Superior Court's ruling, arguing that the defendants' voluntary entry into the business of owning and renting residential property subjected them to the fair housing law, and that the Defendant's practice of religion was not burdened by the application of those laws.

In July of 1994, the Supreme Judicial Court ruled on the case, holding that the Commonwealth must show a compelling interest in eliminating housing discrimination against cohabiting couples that is strong enough to justify the burden placed on the defendants' exercise of their religion. The Court remanded the case to the Franklin Superior Court for a hearing on that issue.

In an Appeals Court decision, Commonwealth v. Robert and Florence Dowd, the trial court had awarded substantial attorneys' fees to the Attorney General, after he prevailed in a claim of housing discrimination based on marital status. The decision was appealed and in August of 1994 the Appeals Court ruled that because of limiting language in the statute, the Attorney General may not receive an award of attorneys' fees under General Law c. 151B.

EMPLOYMENT DISCRIMINATION

In July 1994 the Division moved to intervene in cases filed before the Massachusetts Commission Against Discrimination, alleging that Bull HN Information System had discriminated against numerous former employees on the basis of their age, in violation of the state anti-discrimination act. The MCAD subsequently allowed the Attorney General's motion to intervene, which alleges that Bull HN engaged in a pattern of age discrimination in employee layoffs conducted since 1990. It is alleged that Bull HN has terminated older employees or forced them into early retirement while retaining and hiring younger employees.

MORTGAGE LENDING DISCRIMINATION

Since November 1992, Attorney General Harshbarger's Civil Rights Division has been involved in a comprehensive attack on fair lending barriers in the home mortgage lending industry in Massachusetts.

In March 1994, in what may serve as a model for fair lending practices, the Attorney General and the Massachusetts Bankers Association and 27 banks and mortgage companies entered into an unprecedented and far reaching agreement to effect systemic reform of the mortgage lending industry in Massachusetts.

The three year agreement stems from an investigation conducted by the Attorney General's Office which was prompted in large part by a 1992 study conducted by the Federal Reserve Bank. That study found that black and hispanic applicants were denied mortgages at a rate 60 percent higher than whites with similar financial circumstances and credit histories. Under the three-year agreement, the MBA has agreed to establish six programs and initiatives to discourage mortgage lending bias. These include: a college level program to train and recruit minorities for employment in the mortgage lending industry, including a student apprenticeship program; the organization and sponsorship of a comprehensive statewide credit and homebuyer educational program; the development of a comprehensive diversity, fair lending training module; the promotion of legislation that will encourage banks to undertake self-testing and comparative file reviews; and an agreement to jointly work for legislation for which would create state co-insurance for nonconforming loans.

The MBA has also agreed to ensure and to encourage its two hundred members to adopt internal practice changes including establishing a complaint management system, an ombudsperson to investigate complaints and internal second review programs; and designing a loan origination compensation structure that promotes low and moderate income lending.

The Attorney General and the MBA also announced the appointment of a three-member panel of banking experts who will

be responsible for the review of certain previously denied minority loan applications. The panel will review up to 120 minority applications from 24 separate institutions which the Federal Reserve identified in its 1992 study as potentially having been denied on an inappropriate basis. If the panel finds that any of the application were denied for discriminatory reasons, the applicant will be offered the choice of a $15,000 settlement, a refinancing of their present mortgage or a new mortgage loan.

The Attorney General also reached an agreement with First New Hampshire Mortgage Corp., one of the Commonwealth's largest residential mortgage lenders, to increase the company's relatively low number of minority loan applications. First NH agreed to establish model residential lending programs in Springfield and the Lowell, Lawrence, Haverhill areas as well as to make certain changes in the manner in which it handles residential loan applications in Massachusetts.

The Division Chief also served as a presenter in two national mortgage lending discrimination conferences; one sponsored by the U.S. Department of Housing and Urban Development in January 1994 and the other by the National Community Reinvestment Coalition in February 1994.

POLICE RELATED MATTERS

In a cooperative effort to promote civil rights, assist the police, and provide departments with technical assistance, the Attorney General's Civil Rights Division has continued to provide an extensive amount of civil rights training to police departments about subject matters including civil liability, sexual harassment, cultural awareness, hate crimes, and health clinic blockades and invasions. The Division has led or participated in many training sessions throughout Massachusetts including in the towns of Shrewsbury, Lincoln, Lowell, Woburn, Winchester, as well as at the State Police, Middlesex and Southeastern Massachusetts Police Academies. The Division also participated in the campus law enforcement statewide training program, sponsored by the Attorney General in January 1994.

The Division has also continued to investigate allegations of police misconduct and issue comprehensive reports, and has worked with departments to take remedial steps when credible evidence is found to substantiate the complaints. As a result of the Division's investigation of certain practices of the Chatham Police Department, the Board of Selectman in the Town of Chatham established a Community Advisory Committee to assist the police in more effectively serving that community.

The case of Commonwealth v. Adams, was a civil rights suit, filed in 1989, alleging that thirteen Boston Police officers used excessive force during the arrest of a motorist following a chase which ended in Brookline. After a two-week trial in January 1992

the Suffolk Superior Court issued a civil rights injunction against the individual police officers who had used excessive force during the arrest. A Supreme Judicial Court decision issued in December 1993 affirmed the court-ordered injunction, issued under the Massachusetts Civil Rights Act.

In May of 1994, after extensive negotiations initiated by the Attorney General, a modified final judgment by agreement involving all of the defendants, was entered. Under the terms of the agreement, the injunction will be vacated as of December 31, 1994. The parties also agreed to special supervision, training and reporting requirements through December 31, 1996.

OPERATION RESCUE

In response to numerous "rescue blockades" and clinic invasions that took place at Massachusetts health clinics which provided abortion and counseling services, in 1989 the Office filed a motion to join the ongoing case of Planned Parenthood v. Operation Rescue. A preliminary injunction was issued against Operation Rescue and other defendants in May 1990. After a two-week trial in Superior Court in 1991, a Permanent Injunction was issued against members of Operation Rescue which prohibited the blocking of entrances to clinics which provide abortion services and counseling. This injunction was appealed by the Defendants.

In April 1994, the Supreme Judicial Court issued a precedent-setting decision which affirmed the trial court's permanent injunctive order against clinic blockades and invasions by the defendants. The decision is a vital enforcement tool both because of the penalties available to law enforcement for violation of the order and because the injunction is broad in scope, prohibiting the defendants not only from blockading clinics, but also from directing and instructing others to blockade clinics.

As a result of this and earlier injunctions, 18 individuals have been found guilty of criminal contempt for violation of the court's order and no blockades have taken place since September 1992. In 1994, a Clinic Access Law was enacted by the State Legislature which has made it a crime in Massachusetts to blockade clinics.

GANG PROJECT ANNOUNCEMENT

The Attorney General has announced his intention to use the Massachusetts Civil Rights Act as a tool against gangs who are engaged in a pattern of threats and intimidation and who prey upon law-abiding residents in Massachusetts. In appropriate cases referred to the Division in the future, the Division will strongly consider filing an MCRA action against gang members whose terrorizing acts clearly deprive others of their most fundamental rights and freedom.

LEGISLATIVE INITIATIVES

The Attorney General sponsored a bill to provide to the Attorney General in civil rights enforcement actions the authority to obtain compensatory damages on behalf of victims of civil rights violations and to collect the costs of litigation and reasonable attorneys' fees. Under the proposed bill, courts would also have the discretion to order a proposed bill, courts would also have the discretion to order a civil penalty against a defendant for violation of the civil rights law. The bill also provides that any civil penalties, attorneys' fees and costs that are recovered would be deposited in a special state fund to finance future civil rights actions by the Attorney general, to fund community education, and to finance the development and implementation of model civil rights and law enforcement training programs.

A law review article titled, "The Attorney General's Sponsored Bill to Amend the Massachusetts Civil Rights Act," co-authored by Attorney General Harshbarger and his Chief of his Civil Rights Division, published in the Boston University Public Interest Law Journal in the fall of 1993, discussed the proposed legislation.

OTHER SIGNIFICANT DIVISION INITIATIVES

In January 1994, the Attorney General's Civil Rights Division along with representatives of the U.S. Attorney's Office, District Attorneys' offices, local and state police departments, and the Federal Bureau of Investigations committed their resources and expertise to the formation of the Law Enforcement Hate Crimes Task Force. The Task Force members decided that the Civil Rights Division should serve as the central repository for all materials related to organized hate group activities in Massachusetts. The Division also developed an Intelligence Manual which summarizes all intelligence information collected related to organized hate groups and other hate crime activity in Massachusetts. The Task Force will focus on identifying organized hate groups, sharing information and expertise on hate groups, and coordinating federal and state law enforcement efforts to prosecute hate crimes at both the state and federal level. The Task Force is chaired by the Chief of the Civil Rights Division.

The Chief of the Division also participated as an active member of the Supreme Judicial Court Commission on Race and Ethnic Bias in the Courts, including involvement in public hearings and participation in the drafting and editing of the final report. The final report is scheduled to be issued on September 21, 1994

The Division Chief chaired, and division staff served as active members of the Boston Prosecutors-Police Civil Rights Task Force which coordinates the resources of local, state, and federal agencies to address civil rights issues

arising in Boston. The Task Force addressed civil rights harassment in South Boston and responded in a coordinated fashion to reported racial incidents in Charlestown. The Task Force has also met to develop strategies to apply civil rights laws to gang-related issues within the Boston Housing Authority projects.

The Division also chaired an office-wide AIDS Privacy Task Force whose initiatives include outreach, legal research, developing priorities in regard to legislation, litigation, and confidentiality issues.

DISABILITY RIGHTS PROJECT

In June 1993, Attorney General Scott Harshbarger announced the establishment of the Disability Rights Project within the Civil Rights Division of this Office. With the inauguration of this Project, the Office of the Attorney General substantially expanded its ability to guard and enforce the rights of individuals with disabilities. Significantly, the Attorney General placed the Project within the Civil Rights Division to underscore the critical message that disability rights are civil rights.

Since the announcement, the Project has been actively involved in a community education effort to increase public awareness about the establishment of the Project and disability law. The Project's audiences have included disability rights advocates, municipal officials and business owners.

The Project has three priority areas: A) access to municipal events and services, B) fair housing rights for individuals with disabilities and C) access to and non-discrimination by private entities. In each of these priority areas the Project has been able to achieve solid results, all of which have been attained without having to file suit.

The Project's efforts to increase access to municipal events, services and programs have been very successful. The Project received complaints from the citizens in the following municipalities: Canton, Carver, Chelsea, Clinton, Easthampton, Hingham, Marshfield, Sheffield, Southboro, Sturbridge, Templeton, Wareham and Woburn, who complained that the public meetings were being conducted in physically inaccessible locations. In each instance, the Disability Rights Project contacted municipal officials and requested that they cease convening public meetings in those locations. In each instance the officials responded by immediately moving all open meetings conducted by the local committees and boards to alternative accessible facilities. The Project has also worked with the towns to establish policies which ensure that all municipal services are provided in an accessible manner. In addition, a number of towns, including Canton, Clinton, Marshfield, and Woburn, have allocated substantial sums of money for accessible renovations that will afford access to their town building.

The Project had significant accomplishments in the area of affording access to and non-discrimination by private businesses. Businesses have been utilizing the Project in a consulting capacity as they move forward to build or reconstruct their facilities to afford access and redraft policies to ensure non-discrimination against individuals with disabilities. The Project has sought to respond to complaints against companies in a nonadversarial manner which has enabled us to resolve the issues successfully without litigation. For example, the Project received a complaint that an individual who is deaf experienced difficulty in attempting to obtain services at New England Telephone's (NET'S) service center in Hyannis. The individual sought to clarify a billing dispute. Typically, a customer can resolve such issues by using a free phone in one of the company's service center to talk to a supervisor. When this individual indicated his need to use a TTY (text telephone), he was informed that the customer service center did not have a such equipment. The Project's follow-up factual investigation revealed that none of the phone centers were equipped with TTYs.

When the Disability Rights Project contacted New England Telephone, the Company immediately responded to the issue, proposing a solution which not only served the needs of individuals in Massachusetts, but throughout the Company's five-state service area. NET agreed to install TTYs in each of the 21 Customer Service Centers throughout New England.

In another case, the Project reached a settlement with Plymouth Brockton Bus Co. (P & B) in which they agreed to modify their policy and practice for provision of accessible bus service. The issue was brought to the Project's attention growing out of a concern that P & B's existing policy of requiring a 24-hour advance reservation prevented persons with disabilities from effectively being able to use P & B. The problem was particularly acute when members wished to use accessible buses going to and from the airport or Boston. After a series of meetings with P&B, the agreement provided for a much shorter advance reservation requirement and other contingent arrangements so that individuals needing accessible bus service would avoid the risk of being stranded in Boston or at the airport.

Private universities are also covered under this priority area. An early complaint concerned a local university's plan to hold their paralegal graduation in an inaccessible location. Although the woman herself could have, with difficulty, managed to attend the ceremony, several of her closest friends would have been precluded from attending the event. When the Project contacted the school's counsel, the school immediately agreed to move the graduation to a physically accessible location.

In the third priority area, the Project has worked to enforce fair housing rights for individuals with disabilities,

particularly those who encounter opposition to their desire to reside in the community of their choice. For instance, this office was contacted by representatives of Hope House concerning problems they experienced in connection with their attempt to develop a 10 person residence in Fall River for individuals diagnosed with AIDS. Their greatest obstacle was the City's zoning ordinances which interfered with the establishment of group residences in Fall River by limiting such groups to four unrelated persons living together without a special permit process. The Project sent a letter to the City Solicitor which discussed how state and federal laws applied to the Fall River ordinance. As a result of the letter, the City determined that Hope House was not subject to the ordinance, and issued a permit allowing the project to go forward.

A woman with a seizure disorder contacted this Office when her landlord threatened to evict her, based upon the presence of a dog in her unit, in violation of the building's "no pet" rule. The complainant asserted that the dog had the ability to forewarn her of seizures. State and federal law requires that landlords make a reasonable accommodation in their rules, policies or procedures to ensure that an individual with a disability had an equal opportunity to use and enjoy a dwelling. (M.G.L. Ch. 151B §4). After learning of a kennel that trains and certifies seizure dogs, the Project put the complainant and kennel in touch with each other. Within a week, the kennel had certified the complainant's dog as a Seizure Alert Dog and initiated a "continuing education and training" program. The complainant provided the landlord with the dog's certification and may now stay in the apartment.

When Attorney General Scott Harshbarger announced the establishment of the Disability Rights Project, he specifically emphasized the importance of community education. To that end, the Project has conducted numerous informational sessions on the Project and have presented many trainings on disability law. Some of the notable events include: A) welcoming remarks and talk on the Disability Rights Project at a conference for individuals of color with disabilities, social service agencies and businesses serving that community, B) served as keynote speaker to 300 people at the Annual Consumer Conference sponsored by Massachusetts Rehabilitation Commission, C) presented ADA update at annual convention of Town Counsel and City Solicitors, D) presentation on the ADA and Libraries Seminar sponsored by the Social Law Library, E) wrote a chapter on Title II of the ADA and Municipal Law for inclusion in MCLE book on Municipal Law, and F) wrote a chapter on Legal Rights of Individuals with Disabilities in the School Context for MCLE on School Law and was panelist at MCLE conference.

In an effort to further assist the individuals who contact the Project for information and assistance, the Project has prepared materials which address such subjects as municipal law, school law, employment rights of individuals with disabilities, and

questions and answers on Title II of the Americans with Disabilities Act.

The work of the Disability Rights Project has been well received by the disability community. In fact, Attorney General Scott Harshbarger was awarded the first annual Access Plus Award by the Stavros Independent Living Center for his role in furthering independence for people with disabilities, for promoting their civil rights and for initiating the Disability Rights Project in his office.

Civil Rights

CID investigated "hate crimes," allegations of police misconduct and other violations of the Massachusetts Civil Rights Act by interviewing alleged victims, witnesses and, where appropriate, subjects of such investigations. In cases of alleged misconduct by police or others in law enforcement, investigators obtained and reviewed police reports, court documents and other available evidence.

Environmental Protection

Kid's role in EPD cases primarily involved locating and identifying assets of potentially responsible parties liable for paying costs incurred by the Commonwealth in the clean-up of polluted or hazardous waste sites. Investigators also located former employees and officers of defunct companies responsible in part for such violations, and reviewed, evaluated and analyzed financial documents and prepared ability to pay analyses.

Public Charities

CID investigated individuals and/or organizations who raised funds from the public, allegedly in violation of Massachusetts law. Investigators interviewed victims, usually business people, who made donations to a charity based on the misrepresentation of a solicitor. In some instances, solicitors posed as law enforcement or other public officials. On several occasions, investigators worked with local police departments, local district attorneys and neighboring state attorneys general in locating "couriers" who picked up donations. CID financial investigators reviewed and audited books, records and financial reports of many non-profit organizations.

Regulated Industries Division

Near the end of the fiscal year, investigators joined with PPB and RID attorneys in a project to review and investigate businesses and organizations which withheld from employees contributions for health care premiums, but failed to actually purchase the health insurance policy. Other cases investigated included the sale of fraudulent or costly life insurance and other policies to the elderly, sometimes by unlicensed insurers.

Bureau Prosecutor

Investigators worked with the Bureau prosecutor on several cases which resulted in indictments against a number of individuals for violations of the state's consumer protection and charities laws. Cases included home improvement rip-offs, hearing aid scams and illegal charitable fund raising.

GOVERNMENT BUREAU

Trial

CID played a major role in the investigation of tort actions filed against the Commonwealth which included: the alleged abuse, mistreatment and deaths of clients in state care, alleged wrongful termination of state employees, and personal injuries and other damages which occurred on state-owned property and/or in accidents on state roads or involving state cars. CID also investigated cases of contract disputes and matters involved in eminent domain proceedings.

CRIMINAL BUREAU

Workers' Compensation Fraud

In conjunction with the protocols established by the Attorney General's Task Force to Reduce Waste, Fraud and Abuse in the Workers, Compensation System, CID investigated allegations that state employees or employees of self-insured companies were fraudulently receiving workers, compensation benefits.

Investigators also began working with the Insurance Fraud Bureau of Massachusetts in a joint effort to investigate instances of premium avoidance by companies attempting to defraud insurers of monies owed for workers, compensation coverage.

Fair Labor and Business Practices

During the fiscal year the Attorney General's Fair Labor and Business Practices Division assumed some of the former responsibilities of the Department of Labor. CID financial investigators assisted FLBP inspectors and attorneys in the investigation of prevailing wage and nonpayment of wage cases. Other investigators assisted FLBP by performing intake and basic investigative functions.

STATISTICS

CID opened 547 investigations in Fiscal Year 94, with 278 investigations ongoing as of June 30, 1994. Case distribution by division and/or bureau is as follows:

	Opened during FY 94	6/30/94
Consumer/Antitrust	76	59
Civil Rights	27	15
environmental Protection	37	16
Public Charities	18	11
Regulated Industries	13	13
PPB/Criminal	7	12
Government	3	2
Trial	361	139
Workers' Compensation Fraud	2	8
Family & Community Crimes	1	1
Fair Labor and Business Practices	2	2
	547	278

CHIEF PROSECUTOR'S REPORT

Introduction

Since November 1992, a prosecutor has been dedicated full-time to the Public Protection Bureau efforts. with limited prosecutorial resources, the Chief Prosecutor, began the process of developing the criminal enforcement capability in the Public Protection Bureau primarily in the consumer and charities fraud areas. Under the direction and supervision of the Chief Prosecutor, bureau attorneys with the assistance of civil investigators successfully initiated the very first criminal prosecutions in priority Public Protection Bureau areas. In 1993, a bureau attorney was designated as a half-time criminal prosecutor to assist in those efforts.

Working with the Consumer Protection Division and Division of Public Charities in particular, enforcement efforts this past year focused on fraudulent home improvement contractors, scam businesses with a largely elderly customer clientele, and fraud by unlicensed practitioners. In an effort to enforce civil judgments and orders obtained by this office, particularly where con artists have ignored traditional civil remedies, charges of criminal contempt were also prosecuted. With a special emphasis on crimes where the victims are elderly, the Public Protection Bureau prosecuted a tour bus operator and hearing aid dealer who took advantage of senior citizens.

Parallel Proceedings Guidelines

Since cases referred to the Public Protection Bureau may be evaluated for either civil or criminal enforcement, the possibility of contemporaneous criminal and civil proceedings has evolved. As a result efforts were also undertaken this year to develop guidelines for parallel civil and criminal proceedings within the Office. Under the direction of the Public Protection Bureau Chief with the assistance of the Chief Prosecutor and staff a complete manual for guidelines for parallel criminal and civil prosecutions for use in the Public Protection Bureau was developed. It is anticipated that training and implementation of these guidelines will take place in the coming year.

Training

As part of the development of the Bureaus criminal capability, Public Protection Bureau assistants received regular training in criminal practice and procedure. Criminal Bureau assistant attorneys general were utilized as invited speakers in cross-bureau training. Assistant Attorneys general, working with the Chief Prosecutor are now handling criminal cases from grand jury investigation or District Court complaint to disposition. In addition, training for support staff in preparing documents for criminal practice was provided by Joyce Kearney, support staff to the Chief Prosecutor.

In the ensuing six months, the Criminal unit will continue to work with the divisions of the Public Protection Bureau to screen appropriate cases for investigation and prosecution and to enlarge the pool of assistant attorneys general available to handle criminal cases through expanded training efforts.

Criminal Cases - 1993-1994

5 Defendants Indicted
4 District Court Complaints Obtained
3 Complaints for Criminal Contempt
4 Cases Tried in Superior Court (includes co-defendants)

Cases Disposed

6 Defendants convicted after trial
5 Guilty Pleas
$24,211 Restitution Ordered

Summary Of Cases Disposed

On 5/26/94 a tour bus operator was sentenced in Middlesex Superior Court to two and one half to three years state prison, with three to five years on and after suspended and an order of restitution of $16,821 for stealing funds for bus tours from elderly citizens. The tours were never scheduled and did not take place.

On 4/11/94 two former podiatrist whose licenses had been revoked but who continued to practice were convicted after trial in Suffolk Superior Court of practicing after license revoked, possession of class E substances and possession of hypodermic needles. One defendant received six months in the House of Correction; the other defendant received three years probation.

On 5/3/94, a home health care provider who did not provide services after taking payments from a 104 year old woman plead guilty to larceny in Newburyport District Court. She was sentenced to six months in the House of Correction, suspended for eighteen months with conditions of probation which included $2000 restitution.

On 5/26/94 the same home health care provider pled guilty to larceny in Newton District Court and was sentenced to one year in the House of Correction, suspended for eighteen months with an order of restitution of $560 for not providing services after taking funds.

In December, 1993 two defendants were convicted after trial in Middlesex Superior Court of criminal contempt for violating an injunction obtained under the Civil Rights statute for blockading and trespassing on facilities providing abortion services and counseling. The defendants were sentenced to six months in the House of Correction.

On 2/15/94 a defendant pleaded guilty to five counts of larceny in Essex Superior Court for stealing from elderly individuals. The defendant sold hearing aids, collected payment and never provided them to the consumers. He was sentenced to two years in the House of Correction, suspended for four years with an order of restitution of $4180.

On 4/27/94 the same defendant pleaded guilty to criminal contempt in Suffolk Superior Court for violation of a Suffolk Superior Court final judgment against him relating to his hearing aid business. He was sentenced to nine months in the House of Correction.

On 1/10/94, a home improvement contractor was found guilty by a Middlesex Superior Court jury of eight counts of larceny for stealing money from customers by not providing any contracting services. He was acquitted on three counts. He was sentenced to two years in the House of Correction.

On 6/14/94 a home improvement contractor was convicted in Plymouth Superior Court of one count of larceny over $250. He was acquitted on two counts of violation of the home improvement contractor registration law. He was sentenced on the larceny to two years in the House of Correction, six months to serve.

GOVERNMENT BUREAU

The Government Bureau provides representation for the Commonwealth and its agencies and officials in all types of civil litigation, and for employees of the Commonwealth with respect to certain civil claims made against them resulting from the performance of their duties. The Bureau also provides advice and consultation to officials with respect to legal issues arising in connection with their official functions, particularly in instances where such advance consultation may serve to prevent unnecessary litigation. As in the previous three years, the Bureau in fiscal year 1994 continued and expanded its efforts to develop and maintain close working relationships with agency counsel and to provide them with information and advice on matters of broad common interest. Meetings with all agency general counsel were held in November, 1993 and May, 1994. In December, 1993, we published the third issue of the Agency Counsel Newsletter, containing reports on legal developments in areas of relevance to agencies of the Commonwealth generally.

The Government Bureau consists of an Administrative Law Division and a Trial Division. During fiscal year 1994, three attorneys were assigned permanently to work in both divisions, and we continued to assign a sampling of cases from each division to attorneys in the other, so as to broaden the exposure of the attorneys in both to the full range of cases the Bureau handles. In addition, a number of particularly complex and significant cases were handled by teams assigned to both divisions.

Both the Administrative Law Division and the Trial Division initiate affirmative litigation on behalf of state agencies and the Commonwealth and submit briefs amicus curiae in cases presenting issues of law affecting the Commonwealth's interests. The Administrative Law Division defends suits concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief.

The Division is also responsible for legal review of all newly enacted town by-laws, and for preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties. The Trial Division defends suits seeking damages or other relief for alleged wrongful acts of government officials or employees, particularly contract-related disputes, real estate matters, torts, civil rights violations, employment disputes and environmental claims. The Trial Division also reviews certain contracts, leases, bonds and various conveyancing documents submitted by state agencies for approval as to form. In both Divisions, we have made focused efforts to bring to closure cases that had remained pending but dormant, and to close cases as soon as possible after judgment. This effort, facilitated by increased use of the office's improved Management Information System, has yielded dramatic results.

In fiscal year 1994 the Administrative Law Division closed more than ten times the number of cases closed in fiscal year 1992, and twice the number closed in 1993. In the Trial Division, specifically in the area of tort cases under c. 258, the number of cases closed in fiscal year 1994 was five times the number closed in fiscal year 1992 and nearly twice the number in fiscal year 1993.

AFFIRMATIVE LITIGATION

In addition to managing substantial defensive caseloads, Government Bureau attorneys maintained an active and varied docket of affirmative litigation in fiscal year 1994. Most often, these were suits brought on behalf of a state agency to resolve a dispute related to the discharge of the agency's mission or responsibilities. A number of significant affirmative cases were commenced and a number of others concluded in fiscal year 1994.

We received favorable decisions from the Supreme Judicial Court in two affirmative matters. In Commonwealth v. Boston Redevelopment Authority, the Court entered a declaration that allows construction of a new Suffolk County courthouse to proceed on New Chardon Street in Boston on a parcel that was purchased by the Commonwealth from the BRA in 1965. The Court rejected the BRA's claim that the purchase price for the land must be substantially increased on account of alleged violations of a land disposition agreement executed at the time of the purchase. In The Matter of the Liquidation of American Mutual Liability Insurance Company, the Court held that the Commissioner of insurance, when appointed receiver of an insolvent insurance company, has exclusive authority to assert and settle claims on behalf of the company, subject to court approval.

Significant results in other affirmative matters were obtained at the trial court level. Commonwealth v. Massachusetts Republican State Committee was an action against the Massachusetts Republican State Committee (RSC) for violations of state campaign finance laws arising from a fundraising venture, known as the Commonwealth Business Council, in which limited-admission fundraising events were promoted as opportunities for access to high level appointed state officials. The case resulted in a Consent Judgment under which the RSC is permanently enjoined from using appointed state or local officials as a "draw,, in political fundraising; the RSC was also required to pay a substantial monetary penalty and to fund an independent audit of its financial records for 1992 and 1993. In Commonwealth v. Mayor and Clerk of Boston, the Commonwealth seeks to require the City of Boston annually to comply with its statutory duty to submit to the state Jury Commissioner a list of all Boston residents potentially eligible for jury service. Under an interim agreement reached in the case in August 1993, the City undertook a door-to-door canvass of ninety-two (92)

precincts and identified an additional 50,000 persons eligible for jury service.

In DEP v. Barnes and Noble, we obtained a substantial monetary settlement in an action to recover losses incurred by the Department of Environmental Protection when a water tower on a neighboring building fell on the roof of its Boston offices. In Curtis v. Falmouth School Committee, the Superior Court dismissed a constitutional challenge to the Falmouth School Committee's decision to make condoms available to students as part of its AIDS prevention program and, in doing so, adopted our position taken in an amicus curiae brief filed on behalf of the Department Public Health and the Department of Education.

Significant claims that were asserted in FY 1994 for Commonwealth agencies included: National Relocation v. Kerasiotes, wherein Bureau attorneys brought counterclaims for fraud and violation of the state false claims act against a company seeking allegedly inflated relocation assistance benefits in connection with the Central Artery project; Commonwealth v. Federal Deposit Insurance Corporation, an action on behalf of the state Treasurer to recover millions of dollars in abandoned bank deposits held by the FDIC in its capacity as the receiver for several failed Massachusetts banks; Commonwealth v. U.S. Department of Transportation, an action on behalf of the state Department of Environmental Protection challenging a ruling by the U.S. Department of Transportation that Massachusetts' requirement that hazardous waste transporters post a bond with the state is preempted by federal law. Also, in Michigan, et al. v. Secretary of Energy. Massachusetts has joined nineteen other states before the United States Court of Appeals for the District of Columbia Circuit to seek a declaration that, beginning in 1998, the U.S.Department of Energy is obligated under federal law to store the high-level nuclear waste generated at the nation's commercial reactors.

In fiscal year 1994, the Government Bureau, with the Civil Rights Division, continued to represent state agencies in legal matters related to providing housing for persons with mental illness, mental retardation and AIDS. A siting dispute in Fall River was successfully resolved without litigation, allowing for the construction of a residence for persons with AIDS. Bureau attorneys also provided assistance to state agencies in disputes that arose in connection with the development of a fifty unit residential project in Boston which will serve, among others, persons with AIDS and persons with mental illness.

Bureau attorneys also took leading roles in inter-bureau initiatives involving the development of a public-private program for enforcement of the housing code and rehabilitation of abandoned housing, the investigation of discrimination in employment and mortgage lending, and criminal prosecution of insurance fraud.

AMICUS CURIAE BRIEFS

Bureau attorneys filed several briefs amicus curiae in the Supreme Judicial Court of Massachusetts on matters of importance to the Commonwealth and its agencies. Briefs in three cases addressed the application of the public duty rule, as codified in the 1994 amendments to the Massachusetts Tort Claims Act: Carleton v. Town of Framingham; Celesta v. Town of Watertown; and Pallazola v. Wachenhut Corporation. Another amicus brief, in Horta v. Sullivan, analyzed the principles underlying the discretionary function exception to the Tort Claims Act and applied that analysis to the question certified to the Supreme Judicial Court by the United States Court of Appeals for the First Circuit. Our amicus brief in Loves v. City of Peabody concerned the analysis to be applied to the constitutionality of certain environmental regulations under the takings clause. In Burlington v. Bedford, the Supreme Judicial Court adopted the position presented in our amicus brief, holding that a taking of land that deprives an abutting landowner of all future access across the condemned property to public ways does not give rise to a claim for "special and peculiar,, damages under the eminent domain statute. In Clean Harbors of Braintree, Inc. v. Board of Health of Braintree, the Supreme Judicial Court agreed with our position that an outside section of an appropriations act, permitting Clean Harbors to continue operating a hazardous waste facility in Braintree without obtaining a site assignment from the Town, did not violate a statutory prohibition on addressing non-appropriations matters in appropriations acts.

We also filed two amicus briefs in the federal courts. In the First Circuit Court of Appeals, we argued in Rhode Island v. Narragansett Indian Tribe that New England states retained authority to regulate or prohibit gambling on Native American tribal land, due to federal legislation approving land claims settlements between tribes and states. In Re Cumberland Farms, Inc., we argued to the Bankruptcy Court for the District of Massachusetts that bankruptcy courts may not ignore state law time limitations in adjudicating real estate tax abatements.

ADMINISTRATIVE LAW DIVISION

During fiscal year 1994, the Division opened 1,163 cases and closed 1,150 cases. Cases handled by Division attorneys resulted in one reported decision of the United States Supreme Court, twenty-nine reported decisions of the Supreme Judicial Court, nine reported decisions of the Massachusetts Appeals Court, twelve reported decisions of the United States Court of Appeals for the First Circuit, and four reported decisions of the United States District Court for the District of Massachusetts. As well, Division attorneys were involved in many cases in those courts and in the state trial courts that resulted in unpublished decisions.

1. Defensive Litigation.

In West Lynn Creamery, Inc. v. Commissioner of Food and Agriculture, a United States Supreme Court case handled by the Division in fiscal year 1994, the Court struck down, on Commerce Clause grounds, a milk pricing order that imposed an assessment on milk dealers and granted a subsidy to dairy farmers. In a related case, Adams v. Watson, the United States Court of Appeals for the First Circuit ruled that out-of-state dairy farmers had standing to challenge the pricing order.

The Division continued its efforts during fiscal year 1994 to terminate or reduce judicial oversight under consent decrees regarding public institutions. After remand from the United States Supreme Court, in Inmates of Suffolk County Jail v. Sheriff of Suffolk County, we moved to vacate the consent decree prohibiting double-bunking at the new Suffolk County Jail; that motion was denied by the United States District Court, and the denial was affirmed on appeal. The District Court subsequently allowed the Sheriff's motion to permit some double-bunking. In King v. Greenblatt, the United States District Court denied our motion to modify the consent decree to permit transfer of responsibility for the Treatment Center for the Sexually Dangerous from the Department of Mental Health to the Department of Correction, as directed by the State Legislature.

The Division spent significant time and resources in fiscal year 1994 defending a variety of cases involving health care. In two Medicaid cases, Jewish Memorial Hospital v. Department of Public Welfare and Youville Hospital v. Department of Public Welfare, the Supreme Judicial Court held that state rules for determining the level of care in chronic disease and rehabilitation hospitals do not conflict with statutory prohibitions against regulations fixing criteria for medical necessity; the Court further held that, to the extent that other provisions of state law may jeopardize federal reimbursement of Medicaid expenditures, the Department of Public Welfare is not required to implement them. Other Medicaid cases handled by the Division included St. Margaret's Hospital v. Commissioner of Public Welfare, in which the Appeals Court upheld the Department of Public Welfare's denial of Medicaid benefits on the grounds that the claimant was not treated for an "emergency medical condition," and Baystate Medical Center, Inc. v. Rate Setting Commission, in which the Appeals Court ruled that, in reviewing Medicaid rates set by the Rate Setting Commission, the Division of Administrative Law Appeals properly declined to consider evidence that the hospital had not first presented to the Commission. In a substituted judgment case, In the Matter of R.H., the Appeals Court vacated a Probate Court ruling that a mentally retarded resident of the Fernald School would not, if competent, choose to undergo kidney dialysis treatment. The Court remanded the case for further findings and ordered that the resident undergo a trial run of dialysis.

Other significant litigation involved social service and welfare benefits to children and families. In re Gail, the Supreme Judicial Court held that the Children in Need of Services statute does not condition a child's out-of-home placement on parental consent, does not require the court to dismiss the proceeding on the parent's motion, and does not violate constitutional due process requirements. In Henley v. Commissioner of Public Welfare, plaintiff challenged a state statute requiring the Department of Public Welfare to add children who are recipients of Aid to Families with Dependent Children ("AFDC") residing with nonparent relatives to the "assistance unit" of such relatives, thereby preventing these children from receiving larger AFDC grants as independent units, except in cases of undue hardship. The Appeals Court upheld the Department's decision that the plaintiff had not demonstrated undue hardship and rejected the plaintiff's challenge to the "undue hardship" standard as unconstitutionally vague. The Division also represented state agencies and officials in a variety of cases involving environmental and wildlife conservation issues. In Sierra Club v. Environmental Protection Administration, the United States Court of Appeals upheld the District Court's dismissal of a Clean Air Act challenge to the Central Artery/Third Harbor Tunnel project, ruling that the tunnel ventilation system is not a "stationary source," such as a factory, and so need not meet certain statutory requirements. In a related decision, the Court of Appeals upheld the Environmental Protection Agency's approval of an amendment to the State Implementation Plan under the Clean Air Act establishing a new regulatory scheme for tunnel ventilation systems. In a case arising from the Boston Harbor cleanup, Bays Legal Fund v. Browner, the United States District Court upheld the legality of a sewer outfall pipe under the Endangered Species Act, holding that there was no showing that the outfall would harm whales or other endangered species and that the Massachusetts Water Resources Authority was preserving its options in case further federal review indicates a need for additional protective measures. In another Endangered Species Act case, American Bald Eagles v. Bhatti, challenging the Quabbin Reservoir deer hunt as a threat to the bald eagle, the Court of Appeals affirmed the District Court's judgment in the Commonwealth's favor, based on the lack of evidence of "actual harm" to the endangered species. In Animal Legal Defense Fund,Inc. v. Fisheries and Wildlife Board, the Supreme Judicial Court held that the plaintiffs lacked standing to challenge the constitutionality of the statutory qualifications for certain seats on the Fisheries and Wildlife Board. In Davrod v. Coates, the United States District Court rejected plaintiffs' challenge to a state squid regulation, finding no adverse effect on the plaintiffs or on interstate commerce.

Applications for court-awarded attorney's fees continue to generate a significant amount of litigation. In Brewster v. Dukakis, the United States Court of Appeals modified a District Court order barring all further fee applications in this 17-year-

old consent decree case involving services for the mentally ill at Northampton State Hospital and in Western Massachusetts communities. The Court affirmed, however, the part of the District Court's order barring fees for "monitoring" by plaintiffs, counsel after the final order on the merits entered in January 1992. In Witty v. Dukakis, the Court of Appeals upheld the District Court's denial of plaintiff-intervenors' motion for attorney's fees on the ground that the motion was untimely under the Local Rules. In McNamara v. Dukakis, an action to prevent reduction of mental health services following state budget cuts, the United States District Court rejected as much of plaintiffs' motion for attorney's fees as was based on a "catalyst" theory, finding that plaintiffs had failed to show a causal relation between their suit and the subsequent restoration of various mental health programs. In Department of Public Health v. Chris K., a special education case that was settled, the United States District Court awarded attorney's fees to the student. In doing so, the court rejected most of our arguments for reducing the amount of fees to be awarded, including our contention that no fees should be awarded for time spent on an unsuccessful handicap discrimination claim. In another matter involving attorney's fees, T.P. v. DuBois, the District Court struck down, on constitutional and statutory grounds, a state statute providing for recoupment of attorney's fees for appointed counsel from mental patients, client-funds accounts.

The Division also represented state agencies and officials in a variety of cases involving state employment policies and practices. In Gately v. Commonwealth of Massachusetts, the United States Court of Appeals affirmed a District Court order preliminarily enjoining the Commonwealth, on age discrimination grounds, from mandatorily retiring members of the state police at age 55; the United States Supreme Court denied our petition for certiorari. In Weaver v, Henderson, the United States District Court entered judgment in favor of the defendants on plaintiffs, claim that the State Police's no-mustache rule was arbitrary. In Boston Police Superior Officers Federation v. Civil Service Commission, the Appeals Court upheld the Civil Service Commission's ruling that a police promotional examination that did not include a performance component did not constitute a fair test of supervisory skills and abilities. In Johnson v. Superintendent. Massachusetts State Police, the Supreme Judicial Court ruled that the Superior Court lacked jurisdiction over a state trooper's action to enjoin the imposition of disciplinary sanctions; the Court held that the District Court had exclusive jurisdiction over such actions.

The Division also handled a number of significant tax cases in fiscal year 1994, including Filios v. Department of Revenue, in which the Supreme Judicial Court upheld the Commissioner of Revenue's determination that the Massachusetts tax exemption for contributory pensions does not discriminate against federal pensioners, and the United States Supreme Court denied plaintiffs' petition for certiorari; Koch v. Commissioner of

Revenue, in which the Supreme Judicial Court affirmed the Appellate Tax Board's decision in favor of the taxpayer and granted an abatement totaling $46 million including interest; Commissioner of Revenue V. Chinchillo, in which the Supreme Judicial Court accepted the Commissioner's interpretation of a statute governing taxation of interest income arising from an installment sale; AMIWoodbroke v. Commissioner of Revenue, in which the Supreme Judicial Court held that the taxpayer's interest-free loans to its non-taxpayer corporate parent were "services performed" for the parent such that the Commissioner was authorized to impute interest to the taxpayer and assess taxes based on that interest; and Yankee Companies. Inc. v.Commissioner of Revenue, in which the Appeals Court affirmed a decision of the Appellate Tax Board determining that a foreign corporation is subject to corporate excise tax on income derived from the purchase of accounts receivable from a foreign sister corporation.

Among the significant utilities cases handled by the Division this year were Boston Edison Co. v. Department of Public Utilities, in which the Supreme Judicial Court upheld the Department of Public Utilities' "truly extraordinary circumstances" standard for determining when a utility is entitled to a waiver of Department regulations compelling it to enter into a long-term contract with the winning bidder of a power solicitation; and Bosley v. Department of Public Utilities, in which the Supreme Judicial Court affirmed the Department of Public Utilities' decision not to expand the "primary calling area" for the North Adams telephone exchange. Other significant cases handled by the Division that were decided this year include Simas v. Quaker Fabric Corporation, in which the United States Court of Appeals for the First Circuit held that Massachusetts' Tin Parachute Statute, providing for severance benefits to employees who are laid off shortly before or after a corporate takeover, is preempted by ERISA, the federal retirement benefits statute; Town of Milton v. Commonwealth, in which the Supreme Judicial Court held that the Commonwealth had no statutory obligation to reimburse cities and towns for half the costs of a program providing pay increases to police officers who pursue higher education, unless the Legislature first appropriates funds for this purpose; City of Worcester v. The Governor, in which the Supreme Judicial Court upheld a variety of special education regulations, rate setting rules, and higher education admission requirements, which were challenged as violating Proposition 2 1/2's prohibition on new local mandates; Town of Brookline v. Secretary of the Commonwealth, in which the Supreme Judicial Court upheld the constitutionality of the House of Representatives' redistricting plan; Department of Mental Retardation v. Kendrew, in which the Supreme Judicial Court granted the Department's petition for relief from a District Court order requiring the Department to provide specific services to a criminal defendant; and McGonigle v. Weld, in which the Supreme Judicial Court held that the Governor lacked authority

under the State Ethics Law to suspend the elected Sheriff of Middlesex County upon his indictment.

2. Municipal Law

Town by-laws, home rule charters, and amendments thereto are reviewed and must receive the approval of the Attorney General prior to becoming effective. The review function is performed by attorneys in the Municipal Law Unit within the Administrative Law Division of the Government Bureau. During fiscal year 1994, the Municipal Law Unit reviewed 1,959 by-laws and 14 home rule actions from over 300 towns. Ninety submissions, 4.7 percent of the total, were is approved in whole or in part.

The by-laws reviewed this year consisted of 886 general by-laws and 1,073 zoning by-laws. General by-laws pertain to town government and the exercise of municipal power. Zoning by-laws are a continuing exercise of local police power over the use of land. Zoning by-laws often generate the most local controversy since they affect what landowners consider as their basic constitutional right, i.e., to own, use, and enjoy their property. During this past year, consistent with the last several years, municipalities addressed through by-law enactments pressing environmental concerns, including groundwater protection, sewage disposal, and wetlands protection.

In addition to reviewing by-laws, the Municipal Law Unit publishes the semi-annual Municipal Law Newsletter, which provides municipal officials with up-to-date information on developments in the law governing their functions. During fiscal year 1994, issues of the Newsletter were published in November 1993 and May 1994.

3. Opinions

The Attorney General is authorized by G.L. c. 12, 3, 6, and 9 to render formal opinions and legal advice to constitutional officers, agencies and departments, district attorneys, and branches and committees of the Legislature. Formal, published opinions are given primarily to the heads of state agencies and departments. Less formal legal advice and consultation is also available. Guidelines to the formal opinions process are available from the Opinions Coordinator, as is information about the informal consultation process.

The questions considered in legal opinions must have an immediate, concrete relation to the official duties of the state agency or officer requesting the opinion. Hypothetical or abstract questions, or questions which ask generally about the meaning of a particular statute, lacking a factual underpinning, are not answered.

Formal opinions are not offered on questions raising legal issues that are the subject of litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation.

Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the Attorney General, the secretary then requests the opinion.

Between July 1, 1993 and June 30, 1994, two formal Opinions of the Attorney General were issued. An additional 52 written requests were handled informally. The formal opinions appear at the end of this report.

TRIAL DIVISION

In fiscal year 1994, the Trial Division continued its efforts to review and improve its operations as part of implementation of the restructuring initiated the previous year. The standard procedures adopted in November, 1992, for all new cases, including the establishment of trial teams, the focusing of resources on the preliminary stages of litigation so as to promote early evaluation, preparation and resolution of cases and the maximum utilization of automated management information and calendaring systems to increase efficiency and effectiveness, all were refined and expanded.

One of the highlights of these efforts was the issuance of a report by the Trial Division Settlement Taskforce in September, 1993. The Taskforce had been convened in April of 1993 to review the Division's settlement practices and procedures in order to recommend ways to develop consistent standards for case evaluation and better approaches to the case negotiation process.

The Report of the Taskforce identified several settlement criteria to be applied in all Trial Division cases as well as specific factors relevant to particular practice areas. A suggested settlement decision making format was proposed as were guidelines for considering alternative dispute resolution mechanisms.

Two substantive program recommendations of the Taskforce already have been adopted and implemented. First, case review panels, consisting of attorneys and support staff have been established to review pending cases with the assigned attorney. The panel process gives the assigned attorneys an independent evaluation of their cases' strengths, weaknesses and relative settlement values. The data from these sessions are being collected for ultimate comparisons to actual results.

Second, the Trial Division, working with the office's Management Information System staff, has developed a new computer program that will permit us to track and evaluate settlements and verdicts entered in our cases, so as to provide a realistic, consistent and dependable basis for measuring performance. The data will also be used as a quantifiable factor to be considered in improving future trial strategies and settlement negotiations in similar cases.

During fiscal year 1994, the Trial Division closed 558 cases and opened 404 new cases, reducing the overall Trial Division caseload to 1,258 cases as of the end of the fiscal year. In addition, on-going efforts to review and reduce the number of pending Land Court registration matters has brought the open files down from approximately 500 to about 215.

In the contract area, the Trial Division opened 81 new cases during the fiscal year and closed 89 cases. Judgments against

the Commonwealth and settlements in the 89 concluded cases amounted to approximately $10 million less than the plaintiffs had claimed. As of the end of fiscal year 1994, the Trial Division had approximately 256 contract cases pending, representing a total dollar exposure to the Commonwealth of approximately $50 million.

As in past years, the largest category of contract cases involved construction contract disputes. These included bid protests, in which bidders for a sub-contract or general contract dispute the results of the competitive bid prior to the award of the contract, and claims for cost increases, in which contractors seek additional compensation due to delays, unexpected site conditions and the like.

Significant construction contract or bid protest cases defended by the Trial Division during fiscal year 1994 included Middlesex Corporation v. P. Giosioso & Sons, Inc., in which the Supreme Judicial Court, in an expedited appeal, vacated a preliminary injunction that had stopped the Massachusetts Highway Department from rejecting a low bidder due to its failure to satisfy the minority and women's set-aside requirements included in the bidding specifications.

In JRJ Construction Co. v. Suffolk Construction, the Superior Court denied a subcontractor's claim for compensation for extra work performed at the New Braintree prison, based on contract terms providing that the Commonwealth is not bound by the architect's oral interpretation of construction bidding documents. Similarly, in Commercial Union Insurance Co. v. Cresta Construction Co., a dispute arising out of a construction project at Medfield State Hospital, the Superior Court ruled, as a matter of first impression, that the Department of Capital Planning and Operations could not be held liable to an independent subcontractor.

In a procurement contract bidding case, The Praxis Group, Inc. v. Fisher, the Superior Court denied a preliminary injunction against the Commonwealth arising from a computer purchase by the Department of Procurement and General Services. The Court ruled that the agency's decision to channel state and municipal computer purchases through three prime contracts was reasonable and within the agency's discretion. A Single Justice of the Appeals Court also denied preliminary injunctive relief.

The Trial Division continued to see a steady flow of cases arising from agencies, termination of contracts and leases related to the provision of human services. In two major cases, Trial Division attorneys successfully defended against requests for preliminary injunctions. The plaintiffs in Habilitation Assistance Corp. v. Baker sought to enjoin the cancellation of a contract to provide day program services to clients of the Department of Mental Retardation. The Superior Court denied the request, relying on a contractual provision allowing termination

without cause by either party upon sixty days, notice. In Institute for Developmental Disabilities Inc.d/b/a Crystal S rings School v. Weld, the Superior Court denied the plaintiff's request to enjoin the transfer of any individuals from a school for the developmentally disabled, finding no likelihood of success on the merits of the plaintiff's claim of constructive debarment. In a similar type of case, the Superior Court in AFSCME v. Weld dismissed complaints by unions for relief with respect to the privatization of certain mental health and dietary services on the ground that the plaintiffs had failed to exhaust their administrative remedies.

A number of significant breach of contract claims were successfully resolved by the Trial Division during fiscal year 1994. In Heyman v. Commonwealth, the Appeals Court affirmed a judgment that the Commonwealth did not breach its contract in breaking off negotiations for the lease of office space after the selection of a bidder. The case of G.E. Stimpson Co. v.Commonwealth, in which the exclusive supplier of office supplies to all state agencies from 1985 to 1988 claimed a balance due of $832,000 for goods sold and delivered and $10 million in other damages, was settled for $25,000.

Finally, in Shelby Mutual Insurance Co. v. Commonwealth, several insurance companies were denied reimbursement for several million dollars in workers compensation payments from either the Commonwealth's General Fund or the Workers Compensation Trust Fund. The insurers' payments had previously been reimbursable from the Trust Fund, which had been exhausted. Amendments to the workers compensation law in 1985 substantially revised the Trust Fund and barred payment of the old claims. The Appeals Court held that, even though the amendments extinguished valid contracts and claims, they were reasonable and, therefore, constitutional.

In addition to litigation, the Trial Division advises state agencies and officials on contract issues, including questions concerning the formation of contracts, performance, bidding procedures, bid protest, contract contents, contract interpretation and other miscellaneous matters. The most frequent requests during the fiscal year concerned indemnification clauses, procedural matters in employment contracts, and advice in advance of anticipated construction contract litigation. Requests for advice and assistance came from the Massachusetts Highway Department, Metropolitan District Commission, Executive Office of Transportation and Construction, Board of Regents of Higher Education, Department of Mental Health, Department of Mental Retardation, Department of Environmental Management, State Lottery Commission, Department of Public Welfare, and Division of Capital Planning and Operations. The Trial Division also reviews contracts, leases, and bonds submitted by state agencies for approval as to form. During the fiscal year, the Division received a total of 496 contracts to

review, approving 442 and rejecting 16, some of which were later approved after correction of defects in form.

Two cases in which Trial Division attorneys represented the Contributory Retirement Appeals Board ("CRAB") resulted in appellate decisions during fiscal year 1994. In McIntire v.CRAB, the Supreme Judicial Court held that an employee's rate of contribution to the retirement system is based on the date the employee became a member of the system, rather than the date the employee commenced employment. In McDonough v. CRAB, the Appeals Court affirmed the judgment of the Superior Court upholding CRAB's denial of plaintiff's application for Accidental Disability Retirement benefits, noting that it is within CRAB's discretion to give greater or lesser weight to an administrative law judge's findings.

Trial Division attorneys handled diverse matters involving the real estate property interests of the Commonwealth. The vast majority of cases involve petitions for the assessment of damages resulting from land acquisitions by eminent domain pursuant to G.L. c. 79. During the 1994 fiscal year we disposed of 39 land damage cases, 11 by jury trial and 28 by settlement. The disposition of these cases resulted in savings to the Commonwealth of approximately $11.2 million based on amounts paid compared to amounts claimed.

The Commonwealth's agencies acquire land for a variety of purposes, including roads, colleges, recreation and parks, landfills, agricultural and conservation restrictions, and easements. Agencies involved in such real estate matters include Massachusetts Highway Department, Metropolitan District Commission, the Department of Environmental Management, the Department of Environmental Protection, the Department of Food and Agriculture, the Department of Fisheries, Wildlife and Environmental Law Enforcement and the Division of Capital Planning and operations.

Significant eminent domain cases resolved during the fiscal year included: Leedham v. Commonwealth, in which the Court granted the Commonwealth's motion for summary judgment based on the plaintiff's execution of a general release in the absence of any allegations of fraud or duress; Farrell Enterprise v. Commonwealth, arising from a partial taking by the Massachusetts Highway Department to improve the Northern Avenue Bridge, which the jury valued at $985,000, $5,515,000 less than the plaintiff's expert appraisal and $345,000 above the Commonwealth's appraisal; Peter Gray Corn. v. Commonwealth, concerning a taking by the Massachusetts Highway Department, in which the plaintiff claimed damages of $1,950,000, the Commonwealth's expert testified to damages of $670,000, and the jury returned a verdict of $969,000; Losurdo v. Commonwealth, in which the plaintiffs sought $15,000 for the loss of trees plus $55,000 for loss of privacy resulting from the widening of a road by the Massachusetts Highway Department, the Commonwealth's expert testified to damages of

$2,580, and the jury awarded a total of $15,000; Hero Corp. v. Commonwealth, in which the Appeals Court affirmed a favorable judgment setting damages for a Massachusetts Highway Department taking for construction of an access road to the Pittsfield airport, rejecting the plaintiff's challenge to unobjected on portions of the Commonwealth's expert testimony, as well as the failure to give certain jury instructions; Walukevich v. Commonwealth, in which the Appeals Court affirmed a jury verdict of $67,500, the Commonwealth's expert appraisal, in a case in which the plaintiff sought $675,000 in damages; August v. Commonwealth, where the Appeals Court affirmed judgment for the Commonwealth, holding that unusable land beneath a road could not be included in calculating lot area for zoning purposes; LeClair v. Commonwealth, arising from a Massachusetts Highway Department taking of eight acres for ramp construction in which the Commonwealth paid a pro tanto of $19,400, the plaintiff claimed $110,000, and the jury valued the property at $47,300; Oueset Center Inc. v. Commonwealth, in which a developer of condominiums sought $270,000 for a permanent taking and subsequent 20-month project to install a new bridge and the jury returned a verdict of $61,000, roughly 22%r of the difference between the parties, appraisals; Gasbarro v. Commonwealth, involving land taken by the Massachusetts Highway Department, for which a jury awarded damages of $31,000, some 10% of the amounts plaintiff claimed for the taking, the loss of rental income during the course of construction and the permanent diminution in value of the remaining real property; Salem Country Club v. Commonwealth, in which the plaintiff sought $1,245,000 in connection with the taking, by the Massachusetts Highway Department, of approximately 18 acres of industrially zoned property in Peabody for the new connector between Routes 95 and 128, and the jury returned a verdict of $850,000; and Ackerly Communications v. Commonwealth, in which the Superior Court held that the plaintiffs' contractual right to place signs on property taken for construction of the South Boston Haul Road for the Central Artery Project was not a lease but a license, the loss of which was not compensable under the eminent domain statute.

Trial Division attorneys also have responsibility for protecting the Commonwealth's interests in all petitions for registration of land filed in the Land Court, and for reviewing as to form rental agreements, pro tanto releases, general releases, deeds, taking orders, and other conveyance documents relating to transfers from or to the Commonwealth as required by statute or requested by a state department or agency.

The Trial Division also defends tort and civil rights cases brought against the Commonwealth and its employees. Most of these cases arise under the Massachusetts Tort Claims Act, G.L. c. 258, and federal and state civil rights statutes. In the torts area, the Trial Division opened 228 cases and closed 405 cases during the fiscal year. The number of cases opened constitutes a nearly 40% reduction from the numbers of new tort

cases opened during the 1992 and 1993 fiscal years. We believe that this reduction reflects the impact of the new presentment procedures, including a new computer tracking system, that we developed and implemented with agency counsel in 1992 in order to encourage early investigation and, when appropriate, pre-litigation settlement of claims.

We attribute this improvement to new procedures encouraging early disposition of appropriate cases, and to better case management practices utilizing the office's Management Information System.

Three tort cases resulted in reported appellate decisions in fiscal year 1994. In Shweiri v. Commonwealth, arising from an injury to a patient at a Department of Mental Health facility, the Court affirmed a directed verdict for the Commonwealth, holding that, pursuant to G.L. c. 18, 56, the Commonwealth's liability in damages was offset by its Medicaid payments for treatment of the plaintiff's injuries. Trial Division attorneys assisted the Division of Medical Assistance in enforcing liens on tort recoveries in three other cases resolved in fiscal year 1994.

In Gilmore v. Commonwealth, the Supreme Judicial Court held that the plaintiff met the presentment requirement of the Tort Claims Act for his claim of negligent infliction of emotional distress in the death of his sister by sending the agency a letter claiming negligence in her death along with a copy of a related federal court action. The Court held that these materials provided sufficient information to trigger an investigation, even though they did not state the precise nature of the plaintiff's claim. In Montour v. Commonwealth. The Appeals Court ruled that the presentment requirement was not tolled by the plaintiff's alleged failure to perceive the extent of her injury due to traumatic stress.

The Trial Division resolved four wrongful death cases during the fiscal year 1994. In West, Adm. v. Commonwealth, a jury returned a verdict for the Commonwealth, rejecting a claim that negligence of a state trooper during a high speed chase caused the death of one of the pursued motorcyclists. The Court granted summary judgment for the Commonwealth in Johnson v. City of Boston, finding no evidence that MDC police officers acted unreasonably in a high speed chase death of an individual who stole a bus. Claims against the Commonwealth were also dismissed in Kyle v. Commonwealth, arising from the death of a driver whose vehicle was pushed by a third party into a state highway guardrail and plunged into a canal. Finally, we settled the case of Roake v. Commonwealth, arising from the death of a patient at Bridgewater State Hospital.

Cases presenting allegations of negligent arrest or execution of search warrants included Matt v. Commonwealth and DuPray v. Commonwealth, which were dismissed by the Superior Court on the

ground that the decision to arrest is discretionary, and Donahue v. Commonwealth, in which the Court ruled that the conduct of a search by the State Police was subject to the discretionary function and public duty exceptions to the Tort Claim Act. In Reale v. Commonwealth, a jury returned a verdict for the Commonwealth on the plaintiffs, claim that the State Police were negligent in the execution of a search warrant.

Allegations of lead paint poisoning in subsidized rental housing units inspected by state agencies gave rise to three cases resolved in fiscal year 1994: Chak v. Commonwealth, Robert v. Fredericks, and Davis v. Parish. All three cases were settled based on assumption of primary liability by the owner of the premises.

Other tort cases resolved at trial or on appeal in fiscal year 1994 included: Prindle v. Commonwealth, in which the Appeals Court held that a claim for injury caused by a defective traffic signal was subject to the limitations of the road defect statute; Rankin v. Commonwealth, arising from a slip and fall at a community college, which resulted in a jury verdict for half the amount of plaintiff's lowest settlement demand; Arrendel v. Roxbury Community College, involving a slip and fall at a community college in which the Court directed a verdict for the Commonwealth based on the lack of evidence that the college had knowledge of any defective condition before the incident; Eaton v. Commonwealth, involving a rear-end collision, in which a jury rejected the plaintiff's claim of $30,000 in damages and awarded only $4,800, which the Court reduced to zero based on the plaintiff's receipt of workers, compensation benefits; Najem v. University of Lowell, arising from a slip and fall in a restroom, n which the Court found no negligence in failure to discover water on the floor between regular inspections; and Wang v. Weddel and Commonwealth, an action by a former psychiatric inpatient for damages for a broken arm suffered while she was being restrained, which resulted in a jury verdict for the Commonwealth and its employee on civil rights and intentional tort claims and for the plaintiff on negligence, in an amount less than our offer of judgment.

Other tort cases were resolved on pre-trial motions, including: Sanfillino v. J. F. White Contracting Co. and the Commonwealth, (claim based on detached guardrail held subject to limitations of road defect statute); West v. McNamara (driver's license suspension held to be discretionary function); O'Brien v. Modern Continental (contractor's claim for indemnification and contribution barred by road defect statute and contractual provision); Sullivan v. Commonwealth (claim for injuries from collision at repainting operation barred by road defect statute); Solomon v. Commonwealth (claim for injuries inflicted by escaped prisoner on work release barred by discretionary function doctrine and public duty rule); Cesar v. Commonwealth (public duty rule bars suit for injuries incurred in assault at University of Massachusetts athletic facility); and Brehm v.

City of Boston (claim for injuries incurred on sidewalk abutting state parking lot rejected for lack of evidence of state ownership or control).

Significant civil rights cases resolved in fiscal year 1994 included: Miller v. Department of Correction, in which the First Circuit held claims of inadequate treatment by residents of the Treatment Center for the Sexually Dangerous barred by earlier adjudication of class actions involving conditions at the Treatment Center; Employee Staffing of America v. Linsky, in which the United States District Court dismissed a temporary employment company's claims of deprivation of property rights and defamation, arising from a dispute over the company's workers, compensation obligations; and Rodriguez v. Johnson, in which the United States District Court dismissed claims by a Treatment Center inmate based on an assault by another inmate.

The Trial Division represented the Commonwealth in a wide range of employment related cases during fiscal year 1994, including cases alleging sexual harassment, unlawful discharge and other alleged violations of employees' rights. Two such cases gave rise to reported appellate decisions: in Pacillo v. Gutensohn, the Appeals Court affirmed a judgment for three Department of Environmental Management managers charged with age discrimination; in Chakrabarti v. Commonwealth, the First Circuit affirmed a judgment awarding damages to a former employee against his supervisor for intentional interference with contractual relations in connection with events leading to his discharge but also affirmed judgment for defendants on civil rights claims.

Three employment cases went to trial in fiscal year 1994. In Hamlin v. Department of Social Services, the plaintiff claimed handicap discrimination based on the Department's failure to accommodate his alleged post-traumatic stress disorder by transferring him to a position that would not involve working with abused children. After the jury awarded approximately $78,000 in back pay, the trial court entered judgment notwithstanding the verdict for the Commonwealth. In Miller v. Department of Public Safety, a former state trooper terminated for misconduct claimed racial discrimination, citing more lenient discipline of non-minority troopers. A jury awarded him back pay but no damages for emotional distress, and the Court declined reinstatement or front pay. Finally, in Caron v. Silvia, a jury rejected a former Department of Public Welfare employee's claim that she was fired because she had spoken out on the issue of whether employees should be allowed to smoke at work.

Other employment matters resolved included Petitti v. Department of Mental Health, in which the Court rejected claims of sex and age discrimination in the termination of the plaintiff's employment with the Department of Mental Health; and Howard v. Board of Trustees of Roxbury Community College, in which the Superior Court dismissed a wrongful termination claim by the former president of the college.

Two cases resolved in fiscal year 1994 arose from environmental regulation: In Warcewicz v. Felix, the Appeals Court rejected a claim for damages resulting from wetland enforcement efforts that the Supreme Judicial Court had ruled, in a separate case, were inconsistent with DEP regulations. In Nelson v. Commonwealth, the Superior Court dismissed a complaint of alleged regulatory takings on the Chatham Sand Bar that were already the subject of a pending appeal in the Appeals Court.

THE WESTERN MASSACHUSETTS DIVISION

The Western Massachusetts Division of the office of the Attorney General is responsible for legal matters in the four western counties of Berkshire, Franklin, Hampden and Hampshire. The Division is located Springfield in newly renovated offices at the State Office Building at 436 Dwight Street. It is staffed by eight assistant attorneys general, investigators, support staff and a new State Police During fiscal 1994, the division was responsible for over 500 cases.

The office litigates a wide range of defensive cases including tort contract, eminent domain, and administrative appeals. The successful efforts of the legal staff have saved the citizens of the Commonwealth many thousands of dollars. The office also handled hundreds of victim of violent crime claims.

The division also includes a Medicaid Fraud Control Unit which prosecutes Medicaid fraud and patient abuse cases.

The Consumer Protection Unit has handled many consumer complaints and has filed a number of complaints against businesses who have violated the Consumer Protection Act.

The office has filed a number of civil rights claims on behalf of citizens whose constitutional rights have been denied by others. The office obtained what is believed to be the first injunctions in both Hampshire and Hampden counties protecting the rights of a lesbian woman and gay man.

The addition of the State Police Unit and an assistant attorney general specializing in criminal prosecution has allowed the division to expand its role in prosecuting insurance fraud, consumer fraud, unemployment fraud as well as other white collar crime. The State Police arrested two probation officers who were allegedly receiving bribes.

The Western Massachusetts Division looks forward to its ongoing role as a full service satellite of the Office of the Attorney General, dedicated to providing the residents of western Massachusetts access to their State government.

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No. 93/94-1

August 9, 1993

The Honorable Michael Joseph Connolly
Secretary of the Commonwealth
One Ashburton Place, 17th Floor
Boston, MA 02108

Dear Secretary Connolly:

You have asked for my opinion whether section 64 of chapter 110 of the Acts of 1993 may be the subject of a referendum petition under Article 48 of the Amendments to the Massachusetts Constitution. Your request arises because a referendum petition signed by more than ten qualified voters, calling for the repeal of section 64 and seeking its suspension, was filed with your office in timely fashion. Section 64, enacted as an "outside section" of the fiscal 1994 general appropriation act, eliminates one of the two ways in which students may authorize fees to be assessed on tuition bills at state-operated colleges and universities to support nonpartisan student organizations that attempt to influence state legislation. For the reasons set forth below, I advise you that section 64 is a "law" subject to the referendum.

I. GOVERNING PROVISIONS OF ARTICLE 48

My analysis must begin with the words of the Constitution itself. Article 48, Part I, provides, in pertinent part:

> Legislative power shall continue to be vested in the general court; but the people reserve to themselves . . . the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

Article 48, The Referendum, Part III, Section 1, provides: "A referendum petition may ask for a referendum upon any law enacted by the general court which is not herein expressly excluded." Article 48 then provides:

> Excluded Matters. -- No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

Art. 48, Ref., Pt. III, § 2 (emphasis added). Also, a separate portion of Article 48 excludes additional matters from the referendum, as follows:

> No proposition inconsistent with any one of the following rights of the individual, as at present declared in the

> declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

Art. 48, Init., Pt. II, § 2.

II. PROVISIONS OF THE MEASURE ON WHICH A REFERENDUM HAS BEEN REQUESTED

Here, the provision as to which the referendum petition has been filed, section 64, merely eliminates one of the two ways in which students may authorize fees to be assessed on tuition bills at state-operated colleges and universities to support nonpartisan student organizations that attempt to influence state legislation. I therefore conclude that section 64 does not contain matters excluded from the referendum by either of the two provisions just quoted.[1/]

[1/] I note that because the definition of "nonpartisan" in section 64 expressly excludes organizations "endorsing or adhering to particular . . . religious positions," section 64 might be thought to implicate the provision of Article 48 exempting law relating to religion from the referendum. Art. 48, Ref., Pt. III, § 2. But the law that section 64 amends, G.L. c. 15A, § 29(a) (1992 ed.), already excludes such organizations, in language identical to that in section 64. Thus the enactment of section 64 did not alter, and the repeal of section 64 would not alter, the manner in which fees could be collected from students to fund such organizations.

Viewed in light of pre-existing law, section 64 does not

(Footnote continued on next page.)

The referendum provisions of Article 48 apply only to "laws enacted by the general court" within the meaning of Article 48, Part I, and Part II, Section 1. It is clear that section 64 has been "enacted by the general court," as it was passed by the House and the Senate, and it has been approved by the Governor. See generally Alliance, AFSCME/SEIU, AFL-CIO v. Secretary of Administration, 413 Mass. 377, 380, 382-83 (1992) (discussing meaning of phrase "enacted by the General Court" and concluding that it included gubernatorial action).

The remaining issue is whether section 64 is a "law" within the meaning of the referendum provisions of Article 48. There is no doubt that section 64 has the force of law, and section 64 plainly meets the definition of "law" that the Supreme Judicial Court has applied to the initiative provisions of Article 48. That is, section 64 "imports a general rule of

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(Footnote continued from previous page.)
relate distinctively to religion; it does not discriminate by reason of the religious views of the persons within its scope; and religion is not a factor in its application. Cf. Collins v. Secretary of the Commonwealth, 407 Mass. 837, 851 (1990) (citing these three factors in interpreting scope of religious exclusion in art. 48, Ref., Pt. III, § 2). Unlike the law held to be excluded from the referendum in Collins, section 64 does not "on its face expressly purport[] to alter the rights and obligations of religious institutions . . . ." Id. at 849 (emphasis added). There is thus no reason to think that public discussion of section 64 would touch on religion in any way. Cf. Collins, 845-47, 849 (noting that religious exclusion was intended to "avoid the consequences of permitting State-wide public political discussion of matters relating to religion"). Thus section 64 is not excluded from the referendum by reason of its verbatim reenactment of existing law mentioning religion.

conduct with appropriate means for its enforcement declared by some authority possessing sovereign power over the subject . . . ." Associated Industries of Massachusetts v. Secretary of the Commonwealth, 413 Mass. 1, 10 (1992).

But section 64 was not enacted as a separate bill. Rather, it was enacted as an "outside section" of the fiscal 1994 general appropriation bill enacted under the provisions of Article 63 of the Amendments to the Massachusetts Constitution. Section 64 is not one of the sections of the bill that appropriates money, as are sections 2, 2B, and 2C. Nor is section 64 a condition or restriction on an appropriation, as is, for example section 3 (specifying how local aid appropriated in line items in section 2 is to be distributed). Instead, section 64 concerns a matter completely unrelated to Article 63 or state appropriations matters. Yet section 64 is attached to an appropriation bill that is excluded from the referendum because it "appropriates money for the current or ordinary expenses of the commonwealth . . . ." Art. 48, Ref., Pt. III, § 2. The issue on which I must therefore advise you is whether section 64, as an unrelated outside section attached to an appropriation bill, may be treated as a "law" for purposes of the referendum.

III. WHETHER AN OUTSIDE SECTION MAY BE TREATED AS A "LAW"

The question whether an outside section of an appropriation bill may be treated as a "law" for purposes of the referendum

is a novel one. I begin by considering the precedents on related issues and the significance of the debates that led to the adoption of Article 63. I then consider recent Opinions of the Justices regarding the Governor's power to veto outside sections and recent decisions of the Supreme Judicial Court concerning the treatment of outside sections as "laws" under G.L. c. 29, § 7L (1992 ed.). I also discuss principles of interpretation applicable to Article 48.

A. Precedents Concerning the Availability of a Referendum on a Part of a Law

The general question whether a single section of a statute is subject to the referendum has been answered in the negative on numerous occasions, as has the related question whether a statute may be subject to the referendum where only some (but not all) of its sections address excluded matters.[2/] Thus the

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2/See Ward v. Coletti, 383 Mass. 99, 106-08 (1981) (law extending life of and making appropriation for Ward Commission was excluded from referendum, because appropriation was a material part of law); Powell v. Cole-Hersee Co., 26 Mass. App. Ct. 532, 535 (1988) (referendum was not available on parts of laws; because law reforming workers compensation system included section relating to powers of courts over workers compensation cases, and sections appropriating money for Department of Industrial Accidents, entire law was excluded); 1989-90 Op. Atty. Gen. No. 2, Rep. A.G., Pub. Doc No. 12 at 12 (1989) (law amending G.L. c. 151B was excluded because two sections related to religion); 1982-83 Op. Atty. Gen. No. 4, Rep. A.G., Pub. Doc No. 12 at 89 (1982) (law raising salaries of state officials was excluded because three sections related to compensation of judges); 1965-66 Op. Atty. Gen., Rep. A.G., Pub. Doc No. 12 at 312, 313-14 (1966) (referendum was not available on individual sections of law, although law in its entirety was subject to referendum); VIII Op. Atty. Gen. 331, (Footnote continued on next page.)

Supreme Judicial Court has indicated, for example, that a statute establishing a program of accelerated highway and building construction was not subject to the referendum, because some of its sections appropriated money for the construction program. Yont v. Secretary of the Commonwealth, 275 Mass. 365 (1931). The court stated:

> The argument that the interpretation set forth here will enable the General Court to nullify the effect of art. 48 of the Amendments by tacking to any law an appropriation for a department cannot override the plain words of the Amendment. Moreover, it cannot be presumed that the legislative department of the government will be actuated by unworthy motives or enact laws as a cover for ulterior aims.

Yont, 275 Mass. at 369.

B. The Debates Preceding the Adoption of Article 48

Similarly, the debates in the Constitutional Convention of 1917-18, which led to the adoption of Article 48, contain indications that a referendum on part of a law was not to be

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333-34 (1927) (referendum was not available on individual sections of law, and where one section of law was excluded because it related to powers of courts and applied only to a particular division of the Commonwealth, law in its entirety was excluded). The 1989 Opinion of the Attorney General was effectively upheld in Collins v. Secretary of the Commonwealth, 407 Mass. 837 (1990), although the court alluded only indirectly to the issue of whether a law is excluded from the referendum where only portions of the law address excluded matters. Id. at 851 n.10.

permitted. The Convention recognized that the Legislature might enact "a law dealing with various subjects[,] and we may wish to ask the people's advice simply on part of it and not on the whole of it." 2 Debates in the Constitutional Convention, 1917-18 at 693-94 (1918) (remarks of Mr. Walker). The Convention nevertheless rejected language that would have permitted a referendum not just on a law but on a "part thereof." 2 Debates at 693-702, 808-09, 901.

The Convention's reasons for doing so are significant. The Convention heard fears expressed that if a referendum could be had on a part of a law, "the people [could] knock to pieces [a] law which has been carefully framed by the Legislature," i.e., a law "all of whose component parts are interrelated"; a "particularly interested group of people [could] pick out any one clause in the law and entirely destroy the whole purpose of the law." 2 Debates at 694 (remarks of Mr. Bryant). It was considered "almost impossible for the voters to take a part of a law without the rest of the law before them and to decide intelligently whether that one particular part ought to come out"; to allow a referendum on a small part of a law which the uninformed "may not realize are vital to the whole purpose of the law" was seen as potentially destructive. Id. at 694-95.

But the precise question presented here has never been answered: whether an outside section that is attached to an appropriation bill, but is unrelated to the appropriations in the remainder of the bill, is nevertheless insulated from the

referendum simply by virtue of having been enacted as an outside section rather than a discrete bill. The cases and opinions concluding that where one or more sections of a statute appropriated money, the entire statute was excluded from the referendum, all involved statutes for particular programs and appropriations for those same programs.[3/] None involved an unrelated outside section attached to an appropriation bill.

The Debates are similarly silent on this issue. The same Constitutional Convention that produced Article 48 also produced Article 63, governing the appropriations process. But there was no recognition in the lengthy debates on either article that the Legislature might one day adopt the device of the "outside section" (a phrase apparently unknown at that time) to address, in an appropriation bill, dozens or hundreds of matters completely unrelated to appropriations. It was of course recognized in the Article 63 debates that an appropriation bill might contain many separate items of appropriation, and it was considered essential to give the Governor the power to reduce or veto individual items of appropriation in order to make the overall budget work. 3 Debates at 1146, 1153, 1169 (1918).

3/ See Ward, 383 Mass. at 106-08 (Ward Commission); Powell, 26 Mass. App. Ct. at 535-36 (workers compensation system); Yont, 275 Mass. at 370-71 (highway and building construction).

But there was no discussion in the Article 63 debates of the possibility of unrelated outside sections of appropriation bills, and laws making appropriations for the Commonwealth were to be excluded from the referendum entirely. For these two reasons, there was no discussion of whether the people should be given a special referendum power over unrelated parts of appropriation bills -- a power that might be said to correspond to the Governor's item veto. Thus, it cannot fairly be said that the Convention, in rejecting the proposal to make the referendum applicable to part of a law, resolved the question whether a referendum could be had on an unrelated outside section in an appropriation bill.[4/]

C. Opinions of the Justices Concerning the Governor's Power to Veto Outside Sections

The extensive use of outside sections began in approximately 1980, when the fiscal 1981 general appropriation act included a total of 134 sections. See St. 1980, c. 329 (including reorganization of entire public higher education

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[4/]The court has stated that the Debates, while open for consideration, are "one avenue only for construing the words of the amendment 'in such way as to carry into effect what seems to be the reasonable purpose of the people in adopting [it].' Raymer v. Tax Comm'r, 239 Mass. 410, 412 (1921). This is particularly so where the language of the Debates is, by itself, less than dispositive of the issue." Buckley v. Secretary of the Commonwealth, 371 Mass. 195, 198-99 (1976).

system in section 112).[5/] The fiscal 1982 general appropriation act included a total of 299 sections, see St. 1981, c. 351; and the current year's general appropriation act, St. 1993, c. 110, included 390 sections before gubernatorial vetoes. For present purposes it is unnecessary to catalog the numbers of these sections that bear no relationship to appropriations matters. There can be no dispute that the number is substantial.

The growth in the use of outside sections led almost immediately to controversy.[6/] In 1981, after the Governor vetoed 77 outside sections of the fiscal 1982 general

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[5/] Interestingly, five years earlier, the fiscal 76 general appropriation act included, apparently for the first time, a large number of amendments to the General Laws. St. 1975, c. 684. Although the amendments were to various state tax laws and thus were arguably somewhat related to appropriations, the Governor appears to have been concerned that the statute (or perhaps the sections amending the General Laws) might be subject to the referendum. This may be seen from the Governor's decision to file an emergency statement with the Secretary of the Commonwealth to cause the statute to take effect immediately. See 1975 Acts and Resolves at 841-42; Art. 48, Ref., Pt. 2 (providing that Governor may cause law to take effect immediately by filing emergency statement with Secretary). The Legislature had provided that the statute should take effect upon passage, see St. 1975, c. 684, § 99, but, because the statute did not include an emergency preamble, this provision could operate only if the statute were not subject to the referendum, see Art. 48, Ref., Pt. 1, and so the Governor's decision to file an emergency statement suggests his view that, notwithstanding the exclusion of appropriation bills from the referendum, the statute or some part of it might in fact be subject to the referendum.

[6/] As early as 1977, the Justices noted but did not decide "the question whether the Governor could disapprove general legislation attached as a 'rider' to an appropriation bill." Opinion of the Justices, 373 Mass. 911, 914 (1977).

appropriation act discussed above, St. 1991, c. 351, the House sought an Opinion of the Justices concerning the Governor's power to use his item veto in this manner. Opinion of the Justices, 384 Mass. 820 (1981). Although counsel to the House took the position that the Governor had no such power, id. at 821 n.1, the Justices disagreed.

The Justices began by acknowledging that outside sections did not meet the accepted definition of "item" as a "separable fiscal unit," id. at 822, but the Justices stressed that Article 63 had been intended to create, and must be interpreted so as to preserve, a careful balance of powers between the Legislature and the Governor. Id. at 824. The Governor had been given the item veto in order to avoid "having to veto an entire bill merely on account of one item which does not meet his approval." Id. (quoting 3 Debates at 1146). The obvious problem with making the Governor's veto power applicable only to appropriation bills in their entirety is that such bills are often the most essential bills of the year. They must become law, or else state government grinds to a halt. To give the Governor the power only to veto the entire bill would have been to give him a power that for practical purposes could be used only in extraordinary circumstances, and this would have been inconsistent with the Governor's central and co-equal role in the budget process.

If the Legislature could insert in an appropriation bill provisions that the Governor could not veto without vetoing the

entire bill, then the purpose of the item veto would be evaded. Id. at 825. Thus, notwithstanding that outside sections may not meet the definition of "item" as "separable fiscal unit," id. at 822, and while declining to express any view on "whether such separable provisions may properly be included in a budget bill in the first place," id. at 826. the Justices concluded that for the purposes of his item veto "the Governor may treat as an 'item' any separable provision attached to the general appropriation bill." Id. at 825. Otherwise, "general legislation included in a general appropriation bill would be rendered substantially veto-proof." Id.; see also Opinion of the Justices, 384 Mass. 828, 832 (1981) (same).

Significantly, the Justices noted "that the inclusion of such a section raises the question whether such a section would be insulated from review by the people under the referendum provisions of art. 48." Id. It is worth noting that the Justices' Opinion was rendered only six months after the Supreme Judicial Court had decided that a statute extending the life of the Ward Commission was excluded from the referendum because it included a section appropriating money for the Commission. Ward v. Coletti, 383 Mass. 99 (1981). Notwithstanding Ward, however, the Justices evidently viewed the question whether a "separable" outside section was subject to referendum as one that was still open. 384 Mass. at 825.

In 1991 the Justices took two further steps to refine this analysis. Opinion of the Justices, 411 Mass. 1201 (1991). First, the Justices concluded that outside sections are per se separable from other portions of an appropriation bill, even in the case of an outside section that was closely related to two line item appropriations. Id. at 1213 (noting that section in question was "an outside section, which is separable," even though its veto rendered certain line items ineffective). The Justices cited the 1981 Opinion discussed above as having "implied, if [it] did not expressly state, that any outside section in its entirety is a separable provision . . . ." Id. at 1207.

Second, the Justices' analysis indicated that an outside section, although it could be vetoed in its entirety, was not really an "item"; instead, for gubernatorial veto purposes, an outside section was effectively like a separately enacted bill. The issue arose because the Justices had been asked for their opinion whether the Governor could veto a part of an outside section in the same manner as he could exercise his recognized Article 63 power to veto a part of an item. 411 Mass. at 1215-16. In refusing to extend the analogy between items and outside sections this far, the Justices stressed that they "have never said, nor has the court, that an outside section is an item. It has only been said that an outside section may be treated as an item thereby preventing outside

sections from being veto-proof." Id. at 1216. The Justices continued:

> There would be no justification, let alone necessity, for treating part of an outside section as an item or part of an item. While treating an entire outside section as an item results in its being as susceptible to veto as an act or resolve not attached to an appropriation bill, such acts or resolves cannot be vetoed in part. See Part II, c. 1, § 1, art. 2, of the Massachusetts Constitution. Therefore, if the Governor were to have veto power over portions of outside sections, his veto power over general legislation in outside sections would exceed his veto power in the normal course. . . . [A]ssuming the propriety of outside sections, the Governor's veto power with respect to them ought not be greater than it would be if those sections had been separately enacted.

411 Mass. at 1216.

Because a part of an outside section cannot be treated like a part of an item (i.e., vetoed), it thus appears that outside sections either are not items or cannot be treated as items for all purposes under Article 63. Rather, the Governor's power over outside sections is to be coextensive with his power over separate bills, as set forth in Part II, c. 1, § 1, art. 2 of the Constitution. If outside sections are not subject to the same gubernatorial control as items, and instead are subject to the same gubernatorial control as separately enacted bills, then an outside section that has been approved by the Governor,

like a bill that has been approved by the Governor, becomes a "law" as that term is used in Part II, c. 1, § 1, art. 2.[7]

D. Supreme Judicial Court Decisions Interpreting G.L. c. 29, § 7L

In a separate development that parallels the result reached in the 1991 Opinion discussed above, the Supreme Judicial Court has issued two recent decisions that have treated outside sections as separate "laws" for the purposes of G.L. c. 29, § 7L (1992 ed.). That statute provides in pertinent part: "A law making an appropriation for expenses of the commonwealth shall not contain provisions on any other subject matter."

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[7]The conclusion that outside sections are subject to the referendum has the effect of eliminating a recurring Article 48 objection to the validity of such sections. My analysis here, of course, is grounded in the language and purposes of Article 48, rather than on any secondary implications for other questions concerning outside sections. But one of the frequent objections leveled at outside sections is that they are inconsistent with the referendum provisions of Article 48. E.g., Mitchell v. Secretary of Administration, 413 Mass. 330, 337 (1992). The challenge to the constitutional validity of outside sections remains unresolved. See Clean Harbors of Braintree, Inc., v. Board of Health of Braintree, 415 Mass. 876, 878-79 (1993); Mitchell, 413 Mass. at 336-37; Opinion of the Justices, 411 Mass. at 1216; Town of Brookline v. The Governor, 407 Mass. 377, 382 (1990); New England Memorial Hospital v. Rate Setting Commission, 394 Mass. 296, 303 n.9 (1985); Opinion of the Justices, 384 Mass. at 826. Regardless of whether outside sections are subject to the referendum, the presumption that a statute is constitutional both in substance, e.g., Leibovich v. Antonellis, 410 Mass. 568, 576 (1991), and in form of enactment, e.g., Molesworth v. Secretary of the Commonwealth, 347 Mass. 47, 50 (1964), extends to outside sections. I simply note that the conclusion reached here may have some bearing on the unresolved question.

In Gordon v. Sheriff of Suffolk County, 411 Mass. 238 (1991), the court considered whether certain outside sections of the fiscal 1992 general appropriation act, St. 1991, c. 138, §§ 356-63, which transferred control over a house of correction from Suffolk County to the Commonwealth, were invalid by reason of section 7L. Id. at 239. Although the general appropriation act of which these outside sections were a part was plainly "[a] law making an appropriation for expenses of the commonwealth," the court took the challenged outside sections themselves, and not the appropriation act as a whole, as the relevant unit of analysis. Id. at 247-48. Because the transfer legislation set forth in the outside sections did not in and of itself make an appropriation for expenses of the Commonwealth, the court concluded that "§ 7L does not apply to the transfer legislation . . . ." Id. at 248.

Only three weeks ago, in Clean Harbors of Braintree, Inc., v. Board of Health of Braintree, 415 Mass. 876 (1993), the court similarly treated a single outside section as a "law" for purposes of section 7L. The court reaffirmed the approach adopted in Gordon: "we read the requirements of § 7L as applying to the outside section rather than the appropriations act as a whole." Clean Harbors, 415 Mass. at 879. Because "the requirements of § 7L" apply only to "[a] law," the

conclusion is inescapable that for purposes of section 7L, an outside section is a "law."[8/]

E. Principles Governing the Interpretation of Article 48

The treatment of outside sections as "laws" for purposes of the Governor's veto power and for purposes of G.L. c. 29, § 7L does not end the present inquiry. I must also consider whether treating outside sections as "laws" would be consistent with the purposes of Article 48.

The Supreme Judicial Court has recently reaffirmed that Article 48 must be interpreted in accordance with its "general design and purpose," and that Article 48 "created a people's process . . . intended to provide both a check on legislative action and a means of circumventing an unresponsive General Court." Citizens for a Competitive Massachusetts v. Secretary of the Commonwealth, 413 Mass. 25, 30 (1992) (internal quotations omitted). The court thus rejected the argument that "the Legislature, by failing or refusing to comply with a

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[8/]Both in Gordon, 411 Mass. at 247, and Clean Harbors, 415 Mass. at 879, the court seemed to go out of its way to reach the result that an outside section is a "law" under section 7L. The court could have disposed of the section 7L claim in each case on what by now is the settled ground that one Legislature cannot bind another to exercise its appropriation power in any particular way. See, e.g., Associated Industries of Massachusetts v. Secretary of the Commonwealth, 413 Mass. 1, 9 (1992); Opinion of the Justices, 302 Mass. 605, 610-11 (1939); Opinion of the Justices, 294 Mass. 616, 622 (1936).

mandatory provision of art. 48, [could] frustrate the right of the people to place a proposed law on the ballot." Id. at 31. Similarly, when asked to interpret phrases in Article 48 requiring the General Court to vote "upon the enactment of [a] law" and specifying the consequences if "the general court fails to enact such law," the Justices have indicated that "unless the intended meaning of the words is plain from the context in which they are used, we must look to the purpose of the provision where they appear to determine their meaning." Opinion of the Justices, 370 Mass. 869, 872 (1976).[9/]

Here, the relevant language of Article 48 provides that "the people reserve to themselves . . . the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection." Art. 48, Pt. I. Article 48 further provides: "A referendum petition may ask for a referendum upon any law enacted by the general court which is not herein expressly excluded." Art. 48, Ref., Pt. III, § 1. The obvious purpose of these broadly phrased provisions was to preserve a substantial measure of popular authority over laws enacted by the Legislature.

[9/]The particular question before the Justices in that Opinion was the meaning of the word "enact" rather than the meaning of the word "law." 370 Mass. at 872. But the principle that each word of Article 48 must be interpreted in accordance with the purposes of the Article is just as applicable to the word "law" as to the word "enact".

"A provision of the Constitution commonly is to be interpreted as stating a broad and general principle of government, regulative of all conditions arising in the future and falling within its terms." Opinion of the Justices, 261 Mass. 523, 543-44 (1927); see also Opinion of the Justices, 386 Mass. 1201, 1221 (1982); Opinion of the Justices, 308 Mass. 601, 613 (1941). Thus words and phrases in the Constitution were "not intended to be interpreted in any narrow or constricted sense." Opinion of the Justices, 297 Mass. 577, 580 (1937); see Opinion of the Justices, 308 Mass. at 614.

> The Constitution of the Commonwealth was designed to be an enduring instrument so comprehensive and fundamental in its terms that a free, intelligent and virtuous people may govern themselves under its beneficent provisions through vast changes in social and industrial conditions. In construing its regulations regard must be had to their spirit and purpose as well as to their letter. The great and underlying principles announced by the Constitution and its Amendments must be kept in mind as well as possible narrow interpretations of particular phrases.

Opinion of the Justices, 291 Mass. 572, 575-76 (1935).

Thus the word "law" as appearing in the referendum provisions of Article 48 is not to be construed in a narrow or technical sense. The extensive use of outside sections wholly unrelated to appropriations matters was not known to or discussed by the drafters of Articles 48 or 63. That the Debates evince an intention not to permit a referendum on a part of a law "all of whose component parts are interrelated,"

2 Debates at 694 (remarks of Mr. Bryant), does not dispose of the unforeseen question, now presented, regarding an appropriation act containing multiple sections that are in no way interrelated. Accordingly, I conclude that the word used by the drafters -- "law" -- is broad enough to accommodate, and address the issues raised by, this relatively recent development in legislative procedure.[10/]

IV. CONSIDERATIONS WEIGHING AGAINST TREATING AN OUTSIDE SECTION AS A LAW

A number of considerations have been brought to my attention as possibly weighing against treating an outside section as a law for purposes of the referendum. I discuss these considerations in turn.

A. Availability of an Initiative to Repeal an Outside Section

The suggestion has been made that the right of the people

[10/] In Paisner v. Attorney General, 390 Mass. 593 (1983), the court stated that "not all legislative products are laws" and that statutes inserted in the General Laws that regulated the internal proceedings of the House or the Senate were, despite their form, legislative rules adopted by each house rather than "laws." Id. at 599, 601. The court thus held that an initiative petition proposing a statute that would purport to regulate the internal proceedings of each house did not propose a "law" within the meaning of Article 48. Id. at 603. For present purposes, Paisner is relevant because it indicates that, in determining whether a measure is a "law" for purposes of Article 48, the form of the measure is not necessarily controlling.

to repeal an outside section through the initiative process is sufficient to satisfy the purposes of Article 48. Although the initiative may be used in this manner, I conclude for the reasons set forth below that it is at best an imperfect and inadequate substitute for the referendum.

First, an initiative for a law requires more than twice as many signatures of registered voters for submission to the people than does the referendum.[11/] Second, the initiative process may be considerably slower, requiring up to three years and four months (more than eight times as long as is possible through a referendum) before the measure is submitted to the people.[12/] Third, the initiative process contains no method

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11/An initiative for a law requires: (1) a number of signatures equal to three percent of the entire vote cast for Governor at the preceding state election, in order to be introduced into the Legislature, art. 48, Init., Pt. V, § 1; and (2) if the measure is not enacted by the Legislature, an additional number of signatures equal to one half of one percent of the entire vote cast for Governor at the preceding state election, in order to be submitted to the people Id. A referendum petition requires a number of signatures equal to only one and one half percent of the entire vote cast for Governor at the preceding state election. Art. 48, Ref., Pt. III, § 4. If the petitioners seek suspension of the law pending the referendum, the number is two (rather than one and one half) percent of the entire vote cast for Governor at the preceding state election. Art. 48, Ref., Pt. III, § 3.

12/A portion of a law enacted by the Legislature immediately after the first Wednesday in August of a year in which there is no statewide election (e.g., 1993) could not be placed before the voters for repeal by initiative petition until the second succeeding statewide election, three years and four months (approximately 1215 days) later (e.g., in November of 1996). In contrast, a referendum is available at any statewide election so long as a completed referendum petition is filed with your office more than sixty days before the election. (Footnote continued on next page.)

for suspending the effect of an existing law, as does the referendum process. See Art. 48, Ref., Pt. III, § 3. Thus a law that the people may wish to repeal promptly nevertheless remains in effect for several years. Finally, although the drafters of Article 48 understood that the initiative could be used to achieve results similar to the referendum, 2 Debates at 702 (remarks of Mr. Churchill), it seems clear that if the drafters had viewed the initiative as a fully adequate substitute for the referendum, they would not have provided for a referendum at all. I conclude that the possibility of repealing an outside section through an initiative is not a sufficient basis for barring a referendum on an outside section.

B. Uniform Treatment of Appropriation Bills and Non-Appropriation Bills Under Article 48

I next consider the point that even laws that do not make appropriations may well include separate sections addressing wholly unrelated matters. The significance of this point is that, under the authorities discussed earlier in this opinion, if one section of a law is excluded from the referendum, the

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(Footnote continued from previous page.)
Art. 48, Ref., Pt. III, §§ 3, 4. Even if the referendum petitioners do not file the completed petition until ninety days (the maximum allowable) after the provision in question has become law, the result is that a provision that becomes law as little as approximately 150 days before a statewide election may be submitted to the people through a referendum at that election.

entire law is excluded. If the drafters of article 48 were willing to limit the referendum in this manner as to laws not making appropriations, the argument goes, there is no reason to think that they would not tolerate the same result as to laws that do make appropriations.

The short answer is that the members of the Convention that drafted both Articles 48 and 63 were agreed on the "fundamental point[] . . . that appropriation bills are by their nature unique . . . ." Opinion of the Justices, 384 Mass. 820, 823-24 (1981). As noted, appropriation bills are bills the passage of which is absolutely essential, and thus they are bills that present special problems. Matters may be attached to appropriation bills that are not items of appropriation and might not be approved in the same form if offered as separate bills. Thus the Justices have concluded that the Governor's veto power must extend to individual outside sections. Id.; see also Opinion of the Justices, 411 Mass. 1201, 1216 (1991). Just as the Constitution could not tolerate a system under which "general legislation included in a general appropriation bill would be rendered substantially veto-proof," Opinion of the Justices, 384 Mass. at 825, so is it undesirable to interpret the Constitution in a manner that would render such legislation completely referendum-proof.

I recognize that in Article 63 the drafters gave the Governor the express power to veto parts of bills, whereas the drafters did not expressly give the analogous power to the

people under Article 48. But there is no reason to conclude that the referendum may apply to an outside section only if a precise analogy is possible between the referendum power, as a check on legislative action, and the check on legislative action represented by the Governor's item veto power. The more appropriate analogy, to the extent such analogies are useful, would be between the referendum and the Governor's "unitary veto" power under Mass. Const. Pt. II, c. 1, § 1, art. 2, i.e., his power to veto separate bills in their entirety.

This is because, as the Justices' most recent Opinion plainly indicates, the limits on the Governor's power to veto outside sections are not those applicable to his item veto but instead are the same as those on his unitary veto power. 411 Mass. at 1216. The Justices may thus be of the view that when the Governor vetoes an outside section, he exercises his unitary rather than his item veto power. Regardless of the exact textual source of the Governor's power to veto outside sections, however, the point here is that the absence of a perfect analogy between the people's Article 48 referendum power and the Governor's Article 63 item veto power is not controlling as to the extent of the referendum. There has been no suggestion that the referendum power extends to parts of items, as does the item veto power. My conclusion here is only that unrelated outside sections, which are essentially treated as separate bills for the purposes of gubernatorial vetoes,

are, if approved by the Governor, to be treated as laws for the purposes of the referendum.

C. Presumption of Constitutionality Indicating that Section 64 is Not Subject to the Referendum

I now turn to the suggestion that there is a presumption, binding on executive officials such as the Secretary and the Attorney General, that section 64 is not subject to the referendum. The presumption is said to grow out of the circumstance that the general appropriation act to which section 64 is attached, although not approved by the Governor until July 19, 1993, includes a section stating that, except as otherwise provided in the act, the provisions of the act are to take effect as of July 1, 1993. See St. 1993, c. 110, § 390. Laws that are subject to the referendum, however, may not take effect earlier than ninety days after having become law, unless declared to be emergency laws. Art. 48, Ref., Pt. I. No part of St. 1993, c. 110 has been declared to be an emergency law, yet the Legislature has provided in section 390, that St. 1993, c. 110 is, except as otherwise provided therein, to take effect sooner than ninety days after becoming law. It is said that section 390 could be constitutional only if the sections to which it applies (including section 64, which includes no separate effective date) are not subject to the referendum. Because any duly-enacted statute is presumed constitutional, e.g., Leibovich v. Antonellis, 410 Mass. 568, 576 (1991), the presumption of constitutionality attaching to section 390 is

said to indicate (unless and until a court determines otherwise) that section 64 is not subject to the referendum.

The flaw in this approach is more easily seen by assuming that, instead of expressing its view indirectly through means of an effective date provision, the Legislature had included in a law a section explicitly stating that the law was not subject to the referendum. If a referendum petition filed by ten qualified voters were then filed with you as Secretary, the Legislature's statement could not bar you from making your own independent determination, and from seeking my opinion as Attorney General, regarding whether the law in question was excluded from the referendum. Your duty to make this determination would arise directly out of Article 48, as would my duty to determine whether to prepare a "fair, concise summary" of the law for use on the blank petitions and on the ballot. Art. 48, Ref., Pt. III, §§ 3, 4; Art. 48, Gen. Prov., Pt. III; see, e.g., Yont v. Secretary of the Commonwealth, 275 Mass. 365, 372 (1931) (holding that where a law was excluded from referendum, petitioners had no right to demand that Secretary issue blank petitions for subsequent signers).

A power that "derives from the Constitution" -- here, your power as Secretary and my power as Attorney General to determine for the purposes of performing our constitutional duties whether a matter is excluded from the referendum -- "cannot be abrogated by legislation." Alliance, AFSCME/SEIU, AFL-CIO v. Secretary of Administration, 413 Mass. 377, 383 n.9

(1992). For the Legislature to provide either directly or indirectly that a particular bill is not subject to the referendum would be tantamount to an attempt to add, by statute, to the list of excluded matters set forth in Article 48. I decline to impute to the Legislature any such intention.

This is in no way to say that the views of the Legislature on whether a particular law is subject to the referendum are irrelevant. To the contrary, the views of the Legislature are entitled to the most respectful consideration. See, e.g., Murray v. Secretary of the Commonwealth, 345 Mass. 23, 25 (1962) (discussing Legislature's choice of effective dates and attachment of emergency preambles as indicative of Legislature's view on applicability of referendum); see also Ward v. Coletti, 383 Mass. 99, 108 (1981) (similar). It is entirely appropriate for the Legislature to specify effective dates or attach emergency preambles according to its view of whether a particular law is subject to the referendum.

Here, the Legislature may well have been of the view that no part of St. 1993, c. 110, the act containing section 64, was subject to the referendum. I recognize that there is considerable basis in past precedent that would lend support to that view. But the precise question you have posed here is a novel one, and, in advising you on that question, it is my duty to consider the recent developments in case law and the Opinions of the Justices discussed above. I therefore conclude that the effective date provision in St. 1993, c. 110, § 390,

and the absence of an emergency preamble to that statute, do not bar the exercise of independent judgment on whether section 64 is subject to the referendum.

D. Practical Implications of A Referendum on an Outside Section

The conclusion that an outside section is subject to the referendum raises certain practical implications, which I now address. In my judgment, these considerations furnish no basis for reaching the opposite conclusion.

First, it may be questioned whether a referendum is available on any outside section not otherwise excluded, or instead is limited to those sections that do not bear some close relationship to the appropriation act itself. An outside section that itself appropriated money within the meaning of the referendum provisions of Article 48, or that imposed a condition or restriction on such an appropriation made elsewhere, would of course be excluded. See art. 48, Ref., Pt. III, § 2.[13/] An outside section that did not make, condition,

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[13/]This is because to repeal the condition or restriction would be to alter the purposes for which the appropriated funds could be spent, thus effectively making an appropriation, or at a minimum interfering with the legislative power of appropriation. Cf. Opinion of the Justices, 384 Mass. 828, 837-38 (1981) (concluding that to permit Governor to veto restrictions on use of appropriated funds would interfere with legislative power of appropriation); Attorney General v. Chief Administrative Justice of the Boston Municipal Court Department of the Trial Court, 384 Mass. 511, 515-17 (1981) (concluding that veto of line item language that did not condition or restrict expenditure of appropriated funds did not "enlarge the
(Footnote continued on next page.)

or restrict an appropriation, however, but that closely related to an item of appropriation, would present a different question.[14]/

Here, however, section 64 is not related to appropriations in any way. Therefore, I merely note and do not express any opinion on whether an outside section that closely relates to an excluded appropriation, but does not make, condition, or restrict such an appropriation, would nevertheless be excluded from the referendum. There is no reason to think that the question, if presented, could not be answered according to a standard that would be both workable and consistent with the language and purposes of Article 48.

(Footnote continued from previous page.)
appropriations made by the Legislature" and was therefore permissible). See also Massachusetts Coalition for the Homeless v. Secretary of Human Services, 400 Mass. 806, 817 n.10 (1987) (suggesting that in determining for purposes of G.L. c. 29, § 7L whether a law contained provisions on a subject matter other than appropriation, test might be same as that used to determine validity of gubernatorial item vetoes).

[14]/The court has recognized that outside sections may be "sufficiently related to the subject of appropriation of funds" so as to make it unnecessary to decide the recurring question whether an outside section unrelated to appropriations may be included in an appropriation act. Mitchell v. Secretary of Administration, 413 Mass. 330, 337 (1992) (citing Brookline v. The Governor, 407 Mass. 377, 382, 384 (1990)). At the same time, the Justices have treated outside sections as separable per se from the line items of an appropriation act, even where the Governor's veto of an outside section results in related appropriation items being rendered ineffective. Opinion of the Justices, 411 Mass. at 1206, 1213.

Second, I note that an outside section that is subject to the referendum may not take effect earlier than ninety days after having become law, unless declared to be an emergency law. Art. 48, Ref., Pt. I. The Legislature, however, is accustomed to providing that different sections of appropriation acts will take effect at different times. See, e.g., St. 1992, c. 133, §§ 595-99 (provisions of fiscal 1993 general appropriation act, specifying various effective dates for particular outside sections of act). And where it is deemed necessary to make an outside section effective immediately, the Legislature may do so by attaching an emergency preamble or the Governor may do so by filing an emergency statement. Art. 48, Ref., Pt. II.[15/]

V. CONCLUSION

I conclude by acknowledging that my advice to you on the novel question presented here, based as it is upon recent developments in caselaw and advisory opinions as well as on the language and purposes of Article 48, is not entirely free from doubt. Nevertheless, it is my duty to furnish you with a

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15/ I also note the question whether the treatment of an outside section as a separate bill for purposes of the referendum implies that the Governor may return an outside section to the Legislature with suggestions for amendment pursuant to Article 56 of the Amendments to the Constitution. There is no occasion for me to express any view on this issue. The question was presented to but not resolved by the Justices in 1989. Answer of the Justices, 406 Mass. 1220 (1989).

definite answer to your question in accordance with my best legal judgment. See generally G.L. c. 12, § 3 (1992 ed.). Moreover, by unbroken tradition dating from the very first year after Article 48 was ratified by the people, my predecessors as Attorney General have advised your predecessors as Secretary regarding the proper interpretation of the referendum provisions of that Article. E.g., V Op. Atty. Gen. 400 (1919). Therefore, I advise you that, in my judgment, section 64 is subject to the referendum.

It has been suggested that because the issue is a novel one and a prompt and authoritative judicial determination of the issue is desirable, the wiser course would be for me to advise you in a manner that is calculated to bring about such a determination by provoking a test case. Thus it has been suggested that I should advise you that section 64 is not subject to the referendum, confident that the first ten signers of the referendum petition would immediately bring a court action challenging this conclusion. Although I concur that a judicial determination is desirable, I do not agree that I should attempt to bring about such a determination by rendering an opinion that is contrary to my considered judgment on the merits of the question presented. Nor would it be appropriate to put the signers of the referendum petition to the trouble, expense, and delay of filing a lawsuit to vindicate what, in my

judgment as Attorney General, are their rights under Article 48.[16]

Under the Constitution, either branch of the Legislature or the Governor may request an Opinion of the Justices, and there is no reason why such an Opinion could not be sought in a manner that would result in clarification of the issue presented here. See Mass. Const. Pt. II, c. 3, art. 2; see also Answer of the Justices, 406 Mass. 1220, 1225-26 (1989). But the Constitution confers no such authority on the Attorney General. I have therefore proceeded to express my conclusions, and to set forth my underlying reasoning in considerable detail, in order to fulfill my obligation to advise you in the most helpful manner possible pending further clarification from the courts or the Justices.

In sum, I advise you that section 64 of chapter 110 of the acts of 1993 may be the subject of a referendum petition. In

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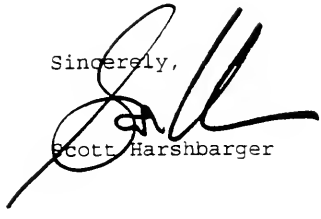
[16] I have not hesitated to defend the Legislature when its actions under Article 48 are directly called into question. LIMITS v. President of the Senate, 414 Mass. 31 (1992). I have also defended the legislative practice of enacting outside sections unrelated to appropriations against challenges under Articles 48 and 63. Clean Harbors of Braintree, Inc., v. Board of Health of Braintree, 415 Mass. 876 (1993) (amicus brief). Here, however, my role is different: to advise you based on my own judgment as to what Article 48 requires.

accordance with your further request, I enclose a fair, concise summary of section 64.

Sincerely,



Scott Harshbarger

Enc.

SUMMARY OF SECTION 64 OF
CHAPTER 110 OF THE ACTS OF 1993

This law eliminates one of the two ways in which students may authorize fees to be assessed on tuition bills at state-operated colleges and universities to support nonpartisan student organizations that attempt to influence state legislation.

The law applies to community and state colleges and the University of Massachusetts. The law takes the place of previous law that allowed a student body, by a majority vote in an official student body referendum, to authorize a "waivable fee," or (at state colleges and the University) an "optional fee," to be collected for such nonpartisan student organizations. Under this law, the boards of trustees at community and state colleges and the University are prohibited from collecting waivable fees and may only collect optional fees for such organizations.

A "waivable fee" is collected when authorized by a majority of those students voting in an official student body referendum. A waivable fee is an amount payable on a tuition bill, appearing as a separately assessed item and accompanied by a statement that the fee is not a charge required to be paid by the student but rather that the student may deduct the charge from the total amount due. The tuition bill also explains the nature of the fee and states that the fee appears on the bill at the request of the student body and does not necessarily reflect the endorsement of the board of trustees.

An "optional fee" is collected when authorized by a majority of those students voting in an official student body referendum. An optional fee is an amount payable on a tuition bill, appearing as a separately assessed item and accompanied by a statement that the fee is not a charge required to be paid by the student but rather that the student may add the charge to the total amount due. The tuition bill also explains the nature of the fee and states that the fee appears on the bill at the request of the student body and does not necessarily reflect the endorsement of the board of trustees.

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ATTORNEY GENERAL
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Boston, MA 02108-1698

No. 93/94-2

August 25, 1993

Douglas McDonald, Executive Director
Massachusetts Water Resources Authority
Charlestown Navy Yard
100 First Avenue
Boston, MA 02129

Dear Mr. McDonald:

You have requested my opinion regarding the proper interpretation of St. 1991, c. 41, "An Act Relative to the Transfer of Certain Commonwealth Land in the Town of Walpole to the Massachusetts Water Resources Authority." Specifically, you ask whether the statute would cause the specified land in the Town of Walpole to revert to the Commonwealth if the Massachusetts Water Resources Authority (MWRA) chose not to develop the land for use as a landfill but instead chose to leave the land in an undeveloped state as a back-up site for use as a landfill if necessary in the future. Your request arises because, as part of the Boston harbor clean-up litigation, United States v. Metropolitan District Commission, No. 85-0489-MA (D. Mass.), the MWRA is seeking federal court approval for the use of a commercial landfill to dispose of certain sewage treatment by-products, but the MWRA needs to know whether the Walpole land would remain available in the

event that commercial disposal becomes impossible. For the reasons set forth below, I conclude that the Walpole land would not so revert but could continue to be held by the MWRA in its undeveloped state for this purpose.[1/]

Chapter 41 directs that certain land located in Walpole and owned by the Commonwealth be transferred by deed to the MWRA "for the public purpose of providing a landfill site, unless an alternative site is developed and approved by the Federal District Court, for disposal of grit, screenings, and, if necessary, sludge or sludge products from metropolitan Boston sewerage treatment facilities." Id. § 1. Section 3 of chapter 41 provides:

> Said transferred land, if developed by the MWRA may be used only for the purposes of construction, operation, and maintenance of a landfill for grits [sic] and screenings from metropolitan Boston sewerage treatment facilities and as a back up site for the disposal of sludge or sludge products from said facilities if the MWRA proposed sludge pelletizing plant becomes non-operational or if the MWRA is unable to fully market the fertilizer pellets produced by said facilities or otherwise dispose of such pellets for beneficial reuse or land application. Such transferred land shall not be used for any other purpose including

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1/ My opinion is rendered pursuant to St. 1984, c. 372, § 24, which authorizes the Attorney General to appear for the MWRA in actions involving water pollution to the same extent as the Attorney General appears for state agencies pursuant to G.L. c. 12, § 3 (1992 ed.). The authority to represent the MWRA in particular cases includes by implication the authority to render opinions on issues related to those cases.

> but not limited to disposal of grit, screenings, sludge or other waste products from any source or project other than as provided in this act. If the transferred land ceases to be used for the purposes authorized herein, all right, title and interest in such transferred land shall revert to the commonwealth.

Section 3 thus provides that the land, "if developed by the MWRA[,] may be used only for" certain specified purposes, and that if the land "ceases to be used for the purposes authorized herein," the land will revert to the Commonwealth. But section 3 clearly contemplates that the land might never be developed by the MWRA at all. It is only "if" the land is developed that it must be "used" for one or more of the purposes specified in section 3.

Moreover, the land will revert only if it "ceases" to be "used" for the authorized purposes. If the land is never "used" for any purpose, then it will never "cease" to be "used" for an authorized purpose, and thus the reversion clause will not be triggered. Had the Legislature provided for reversion in the event the land "fails" to be used for the specified purposes, there is no question that the MWRA could not hold the land in an undeveloped state for an extended period. But "cease" means something quite different than "fail." "Cease" means "that something has existed and then has stopped, that is, has ceased to exist." Pacheco v. Lachapelle, 163 A.2d 38, 40 (R.I. 1960). The word "applies 'to that which is thought of as being . . . . One cannot 'stop' or 'cease' doing a thing

unless he is doing it at the time. There must be a beginning and a continuance before an end." Bradner v. Vasquez, 227 P.2d 559, 561, 102 Cal. App. 2d 338 (Cal. Dist. Ct. App. 1951) (internal citations and quotations omitted).

Thus in Jordan v. Haskell, 63 Me. 189 (1875), the Maine Supreme Judicial Court considered a statute providing that land taken for the construction of a schoolhouse would revert to the original owner if a schoolhouse "ceased to be thereon" for two years. The court held that where no schoolhouse had been constructed within two years of the taking, the statute did not cause the land to revert. Id. at 192. "Here the [school] house has not ceased to be, nor begun to be, thereon. There must be the beginning before the end. This provision was intended to apply to an occupancy once had and abandoned. Any other construction might result in wholly preventing locations for school house purposes," because there might be legitimate reasons for not building a school house in the two years after land was taken for the purpose. Id.

Similarly, in Nicomen Boom Co. v. North Shore Boom & Driving Co., 82 P. 412 (Wash. 1905), app. dismissed, 205 U.S. 548 (1907), 212 U.S. 406 (1909), the Washington Supreme Court considered a statute providing that property taken for the construction and maintenance of a log boom would revert to the original owner whenever use of the property for a log boom "shall cease for a period of one year." 82 P. at 416. The court held that where the property taken was not actually used

for a log boom within a year after the taking, the statute did not cause the property to revert:

> The reason for the provision seems to be that, if the land has once been applied to the intended use, and that use ceases for a year, it shall be presumed that the necessity for its use no longer exists, and the landowner shall then be entitled to re-enter and occupy it. We do not think the statute applies to lands located with reference to future needs, the actual necessity for the use of which has not yet arisen, but which necessity may reasonably be anticipated.

Id.

Here, apart from the use of the phrase "ceases to be used," other provisions of chapter 41 are consistent with the interpretation that the land will not automatically revert if held by the MWRA in an undeveloped state. For example, section 1 directs (with emphasis added) that the land be transferred "for the public purpose of providing a landfill site," rather than for the narrower purpose of providing a landfill itself.[2/] Indeed, providing a "site" could be viewed as one of the "purposes authorized" by chapter 41, such that as long as the land is held as a site for the purpose of providing a

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[2/]Section 1 provides that the land is to be transferred for the purpose of providing such a site "unless an alternative site is developed and approved by the Federal District Court . . . ." This language creates a condition the satisfaction of which would have halted the original transfer of the land (now completed) from the Commonwealth to the MWRA. It is not a condition the post-transfer satisfaction of which would cause a reversion.

landfill in the future, it has not "cease[d] to be used for the purposes authorized herein" within the meaning of the reversion clause of section 3.

In addition, section 4 provides that the transfer is subject to an easement to permit the Department of Environmental Protection (DEP) to inspect "any landfill constructed on the premises" and "any material being deposited therein . . . ." Section 6 directs DEP to install wells to provide warning of any release of leachate into the groundwater "under and about the proposed facility." Section 13 requires the MWRA to provide "mitigation to the property owners abutting the site of the potential residuals landfill . . . ." And section 14 requires the MWRA to pay a flat annual fee to the Towns of Walpole and Norfolk "as long as the landfill is in operation." These provisions all demonstrate the Legislature's recognition that the landfill might never be constructed. Had the Legislature intended the absence of construction to lead to a reversion, presumably the Legislature would have said so in language at least as direct as the provisions just quoted.

In a similar vein, section 7 provides that "[i]n the event of a reversion, MWRA shall be obligated to take all action necessary to return the transferred land to a safe condition . . . ." This language appears to envision a reversion occurring after the MWRA has undertaken some activity that has transformed the land in some way. Although not necessarily inconsistent with a reversion of undeveloped land, the language

does suggest that the Legislature's primary, if not exclusive, focus was on a reversion triggered by unauthorized activity, the effects of which would have to be undone, rather than a reversion triggered by inactivity.

It is also worth noting that although chapter 41 was approved by the Governor on May 20, 1991, and an emergency declaration was filed on May 21, 1991, section 9 prohibits the MWRA from commencing construction prior to September 1, 1992, unless certain conditions are met. And section 10 directs the MWRA to establish, "at least ninety days prior to the operation of the landfill facility," a program to require member communities to accept sludge pellets. The Legislature thus envisioned that the land would lie undeveloped for at least a period of fifteen months, and that certain other contingencies would have to be met well in advance of any landfill being operated. Yet clearly the Legislature did not intend this initial period of non-use as a landfill to trigger the reversion clause.

If the Legislature had intended the land to revert unless construction commenced or the site began to be used as a landfill by some definite time after September 1, 1992, or even within a reasonable period after that date, presumably the Legislature would have said so. Cf. section 13 (requiring MWRA to provide mitigation to abutters "within a reasonable time"). In other words, having recognized an initial period of permissible inactivity, the Legislature would have placed some

outer limit on that period had it intended subsequent inactivity to result in reversion. Yet no such limit appears anywhere in chapter 41.

Chapter 41 expressly recognizes that one of the permissible uses of the land is "as a back up site for the disposal of sludge or sludge products if the MWRA proposed sludge pelletizing plant becomes non-operational" or if certain other contingencies occur. These contingencies are by no means certain to occur either immediately or not at all. For example, for the "proposed" sludge pelletizing plant to first become operational and then become non-operational might not occur until some point well into the future. And it could hardly be that the Legislature intended to forbid the MWRA from keeping the land as a back-up site for sludge disposal unless the MWRA had first commenced using the site as a landfill for grit and screenings. The fact that the need for a back-up site for sludge disposal might not become pressing until some point in the future supports the conclusion that holding the land undeveloped will not cause it to revert to the Commonwealth.

Although the language of the statute is sufficiently clear that there may be no need to consider extrinsic factors, I note that the circumstances leading to the enactment of chapter 41 support my conclusion. Chapter 41 was a direct response to a federal court order banning sewer hook-ups emptying into Boston Harbor until such time as the MWRA was given the power to acquire a suitable landfill site. See United States v.

Metropolitan District Commission, 930 F.2d 132 (1st Cir. 1991) (upholding ban). The Legislature enacted chapter 41 not because it was particularly anxious for the MWRA to construct a landfill in Walpole but because it was essential at that time to give the MWRA the means and authority to construct such a landfill.

Thus there is no indication of any legislative intent to preclude the MWRA from seeking alternative means of disposal that would make actual construction in Walpole unnecessary. Nor is there any reason to believe that the Legislature intended to require the MWRA immediately to construct a landfill in Walpole, even though its use might prove unnecessary, simply in order to prevent the site from reverting. So long as there remains a potential need for a landfill in Walpole, and so long as the site is not used for any purpose prohibited by chapter 41, it serves the purposes of chapter 41 for the MWRA to retain ownership of the site in an undeveloped state.

Accordingly, I conclude that the MWRA may hold the land in an undeveloped state for the purpose of providing a back-up landfill site without causing the land to revert to the Commonwealth by operation of chapter 41.

Sincerely,

Scott Harshbarger